

## TASMANIA.

## THE MENTAL DEFICIENCY ACT, 1920.

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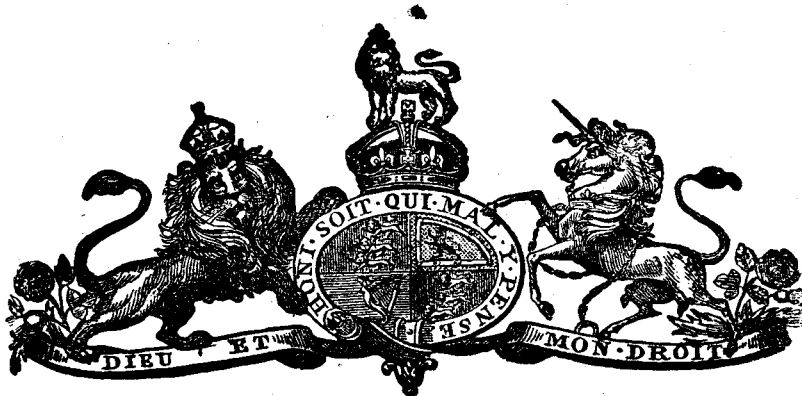
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T A S M A N I A.



1920.

ANNO UNDECIMO

GEORGII V. REGIS.

No. 50.



AN ACT to make provision for the Care of Feeble-minded and other Mentally Defective Persons, and for other purposes.

A.D. 1920. See 16 Geo. V (No. 5) (1920)

[24 December, 1920.]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows :—

PART I.

PRELIMINARY.

- 1 This Act may be cited as "The Mental Deficiency Act, 1920." Short title.
- 2 This Act shall come into operation on a day to be fixed by the Governor by proclamation.

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Division.

**3** This Act is divided into the following parts :—

Part I.—Preliminary. (Sects. 1 to 4.)

Part II.—Power and Manner of Dealing with Defectives.  
(Sects. 5 to 37.)

Part III.—Mental Deficiency Board. (Sects. 38 to 52.)

Part IV.—Establishment and Certification of Institutions, &c.  
(Sects. 53 to 59.)

Part V.—Administration of Estates of Defective Persons.  
(Sects. 60 to 95.)

Part VI.—General Provisions, Offences, and Penalties. (Sects.  
96 to 110.)

Interpretation.  
Cf. 3 and 4 Geo.  
V., Ch. 28, s. 71  
(Imp.).

**4** In this Act, unless the context or subject-matter otherwise indicates or requires—

“ Age ” means, in the absence of positive evidence as to age, the apparent age :

“ Board ” means the Mental Deficiency Board constituted under this Act :

“ Certified house ” means a house in which defectives are received by the owner thereof for his private profit, and in respect of which a certificate has been granted under this Act :

“ Certified institution ” means an institution in respect of which a certificate has been granted under this Act to the manager to receive defectives therein :

“ Clinic ” means the State Psychological Clinic established under this Act :

“ Defective ” means any person, being mentally defective, who is a defective within the meaning of this Act, and who belongs to any of the classes of defectives mentioned in Section Five of this Act, and includes any defective who is in an institution for defectives, or under guardianship or supervision, or who is so found on inquiry under Part V. of this Act :

“ Examining authority ” means and includes—

i. Two legally qualified medical practitioners, One of whom is approved by the Board : or

ii. One legally qualified medical practitioner in conjunction with an examining psychologist approved by the board ;

who make for the purposes of this Act an examination of any person who is or who is alleged to be a defective :

“ Government institution ” means and includes any Government institution or colony, or any Government farm or observation or other colony or home, or any Government residential training or industrial school, or any other Government institution for defectives established under this Act :

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- “Guardian,” when used in reference to a guardian appointed under this Act, means any person under whose guardianship a defective is placed in accordance with the provisions of this Act, and who exercises such powers as would have been exercisable if he had been the father of the defective, and the defective had been under the age of Fourteen years : A.D. 1920.
- “Institution” and “institution for defectives” mean and include any Government institution for defectives, or certified institution, or certified house :
- “Intoxicant” includes any intoxicating liquor, and any liquor within the meaning of “The Licensing Act, 1902,” and any sedative, narcotic, or stimulant, drug, or preparation :
- “Judicial authority” means and includes any police magistrate, or any justices specially appointed for the purposes of this Act, who exercise the powers conferred by this Act upon a judicial authority :
- “Maintenance” includes clothing, nursing, support, medical treatment, necessaries, training, discipline, and instruction :
- “Managers” means the persons, for the time being, having the management or control of any certified institution :
- “Minister” means the responsible Minister of the Crown for the time being, charged with the administration of this Act : Provided that in Sections Nine, Twenty-seven, Twenty-nine, and Thirty respectively, the word “Minister” means the responsible Minister of the Crown for the time being controlling the prison, hospital, institution, retreat, or place of detention therein mentioned :
- “Ordinary school” means and includes any school within the meaning of “The Education Act, 1885,” or of any amendment thereof, or within the meaning of “The Registration of Teachers and Schools Act, 1906,” or any other school not under the control of the Education Department, but does not include any special school, or special class in an ordinary or other school, for children who are defectives within the meaning of this Act :
- “Parent or guardian” includes, in relation to a defective, either of his parents or any person who undertakes or performs towards the defective the duty of a parent or guardian, or any person who is by law liable to maintain a defective or with whom the defective in fact lives or lived at the time when an order regarding him was made under this Act, and upon whom the defective is or was then dependent :
- “Part” means Part of this Act :
- “Place of safety” and “receiving depot” mean and include any institution, any place of detention (other than a police station or prison), receiving home, or shelter, hospital, surgery, or other suitable place, the occupier of which is willing to receive, temporarily, persons who may be taken to places of safety under this Act :

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- “Police Officer” includes any constable or officer of police :
- “Prescribed” means prescribed by this Act or prescribed by regulations made under this Act :
- “Quarter day” means and includes First day of March, First day of June, First day of September, and First day of December, in each year :
- “Relative,” as regards an adult, means and includes the husband or wife or a lineal ancestor or lineal descendant, or lineal descendant of an ancestor, and not more remote than great-grandfather or great-grandmother ; and, as regards a child, means and includes in addition the interpretation of “near relative” in Section Four of “The Children’s Charter” :
- “Special school or class” means and includes any special school or special class, whether in connection with any ordinary school or not, established and maintained by the Education Department for the instruction of children over the age of Seven years and not over the age of Sixteen years, who, though not idiots nor imbeciles, are defectives within the meaning of this Act :
- “Superintendent” means and includes any medical or other superintendent, or any person in charge of any Government institution for defectives, certified institution or certified house :
- “Supervision” means the voluntary caring for, or assisting, protecting, or overseeing of defectives, not in institutions, by any person <sup>appointed by</sup> ~~voluntary society or committee~~, with the approval of the Board in that behalf in the interest of the defective :

*Amended by no. 51 of 1925, s. 2.**or any voluntary society or committee approved by the Board in that behalf*

## PART II.

## POWER AND MANNER OF DEALING WITH DEFECTIVES.

*Powers of Dealing with Defectives.*

Definition of defectives.  
3 and 4 Geo. V.,  
ch. 28, s. 1 (Imp.).

- 5** The following classes of persons who are mentally defective shall be deemed to be defectives within the meaning of this Act :—
- i. Idiots ; that is to say, persons so deeply defective in mind from birth or from an early age as to be unable to guard themselves against common physical dangers :
  - ii. Imbeciles ; that is to say, persons in whose case there exists from birth or from an early age mental defectiveness not amounting to idiocy, yet so pronounced that they are incapable of managing themselves or their affairs, or in the case of children, of being taught to do so :
  - iii. Feeble-minded persons ; that is to say, persons in whose case there exists from birth or from an early age mental defectiveness not amounting to imbecility, yet so pronounced that they require care, supervision, and control for their own protec-

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tion or for the protection of others, or, in the case of children, that they by reason of such defectiveness appear to be permanently incapable of receiving proper benefit from the instruction in ordinary schools : A.D. 1920.

- iv. Moral imbeciles ; that is to say, persons who from an early age display some permanent mental defect coupled with strong vicious or criminal propensities on which punishment has had little or no deterrent effect.

**6** A person who is a defective may be dealt with under this Act by being sent to or placed in an institution for defectives or placed under guardianship—

Circumstances rendering defectives subject to be dealt with. Cf. *ibid.*, s. 2 (Imp.).

- i.—(a) At the instance of his parent or guardian, if he is an idiot or imbecile, or at the instance of his parent if, though not an idiot or imbecile, he is under the age of Twenty-one ; or

- (b) At the instance of the Chairman of the Board or any person authorised in writing for the purpose by him, if such defective is a child over the age of Seven years and not over the age of Sixteen years, and such notice has been given to such Chairman respecting him as is mentioned in the next following section : Provided that the consent of the parent or guardian of such defective shall first be obtained ; or

ii If in addition to being a defective he is a person—

- (a) Who is found neglected, abandoned, or without visible means of support, or cruelly treated, or is a neglected child according to the definition “neglected child” in Section Four of “The Children’s Charter” ; or

- (b) Who is found guilty of any criminal offence, or who is committed to or found liable to be committed to an institution within the meaning of “The Children’s Charter” ; or

- (c) Who is undergoing imprisonment (except imprisonment under civil process), or is, by order of a court, or justice or justices, undergoing detention in a place of detention, or committed to an institution within the meaning of “The Children’s Charter,” or detained in a mental diseases hospital ; or

- (d) Who is committed to or found liable to be committed to a retreat for inebriates under “The Inebriates Act, 1885,” or to a hospital for inebriates under “The Inebriate Hospitals Act, 1892” ; or 49 Vict. No. 17. 56 Vict. No. 20.

- (e) In whose case such notice has been given to the Chairman of the Board, as is mentioned in the next following section ; or

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*Amended No. 51 of A.D. 1920.*  
*1925, s. 3*

*or from any charitable institution or home, or  
 from any hospital*

(f) Who is in receipt of aid or compassionate allowance from the State at the time of giving birth to an illegitimate child or when pregnant of such child.

Notice to be given to Chairman of Board.  
 Cf. *ibid.*, s. 2 (2) (Imp.).

7—(1) Notice shall subject to the regulations, be given to the Chairman of the Board—

i. By the Director of Education in the case of all defective children over the age of Seven years—

(a) Who, in the opinion of the Director of Education, are incapable by reason of mental defect of receiving proper benefit from instruction in ordinary schools under his control without detriment to the interests of the other children, and who do not avail themselves of any provision, or for whom no provision is made, for their receiving benefit from instruction in special schools or classes for mental defectives, or in any other suitable way ; or

(b) Who, having been admitted to a special school or class, have been ascertained to be incapable by reason of mental defect of receiving benefit or further benefit from instruction therein, or who cannot be instructed in a special school or class, without detriment to the interests of the other children ;

(c) Who, because of special circumstances, in the opinion of the Director of Education, should be dealt with under this Act ;

(d) Who, on or before attaining the age of Fourteen years, if in an ordinary school under his control, or the age of Sixteen years, if in a special school or class under his control, are about to be withdrawn or discharged from such ordinary school or special school or class, and in whose case the Director of Education is of opinion that it would be to their benefit that they should be sent to an institution or placed under guardianship or supervision :

ii. By every head teacher or principal in charge of a school, whether public or private (but not under the control of the Education Department), in the case of all defective children over the age of Seven, attending his school, who in the opinion of the head teacher or principal, or of the Director of the Clinic, appear to be incapable by reason of mental defect of receiving proper benefit from instruction in such school without detriment to the interests of the other children :



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III. By the following guardians, constituted by Section Eleven A.D. 1920  
of "The Children's Charter," in the case of all defective  
children under their respective guardianship, namely:—

- (a) The Secretary of "The Children of the State Department";
- (b) The Superintendent or Matron of any Government institution;
- (c) The managers of any institution within the meaning of Section Four of "The Children's Charter."

The notice required by this Paragraph III. shall be in the prescribed form, and shall set forth the provision, if any, made for the training, supervision, protection, and control of such defective children: Provided that such notice shall not be made in the case of such defectives as are included in Subdivisions (b) and (c) of Paragraph II. of the foregoing section.

(2) The Chairman of the Board, or any person authorised in writing for the purpose by him, shall, upon receipt of any such notice respecting any defective ~~children~~ <sup>persons</sup>, take the necessary steps to have them dealt with in accordance with the provisions of this Act.

*new paras. inserted,  
No. 51 of 1925, A. H.*

*Amended do.*

8—(1) Subject to Subsection (3), the parent or guardian of a defective who is an idiot or imbecile, and the parent of a defective who though not an idiot or imbecile, is under the age of Twenty-one years, may place him in an institution for defectives or under guardianship.

Power to deal with defectives at instance of parent, guardian, or Chairman of Board.  
Cf. *ibid.* s. 3 (Imp.).

(2) Subject to Subsection (3), the Chairman of the Board, or any person authorised in writing for the purpose by him, may place in an institution for defectives or under guardianship any defective being a child over the age of Seven years and not over the age of Sixteen years in whose case notice has been given to the Chairman of the Board in accordance with the immediately preceding section: Provided that the consent of the parent or guardian of such defective shall first be obtained.

(3) No defective shall be so placed in an institution or under guardianship unless he is certified to be a defective under this Act after the prescribed examination by an examining authority. Where any such defective is not an idiot or imbecile, he shall not be so placed in an institution or under guardianship unless the certificate or certificates—

- i. Shall also be signed, after such inquiry and further examination as he shall think fit, by a judicial authority for the purposes of this Act:
- ii. Shall state that the signatories are satisfied that the person to whom the certificate or certificates relate is a defective, and also the class of defectives to which he belongs; and
- iii. Shall be accompanied by a statement, signed by the parent or guardian of the defective, giving the prescribed particulars with respect to him:

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Provided that if the aforesaid judicial authority is of the opinion that such defective should be placed under supervision, and that such supervision is available, he may direct the Board to take the necessary steps to place such defective under supervision.

(4) Where a defective has been so placed in an institution for defectives or under guardianship, the superintendent or managers of the institution, or the person under whose guardianship he has been placed, shall, within Seven days after his reception, send to the Board notice of his reception, and such other particulars as may be prescribed: Provided that such defective shall not be received into the institution or under such guardianship unless the certificate or certificates of the prescribed examination are produced to, and left with, the superintendent or managers of the institution or the person under whose guardianship the defective has been placed, as the case may be.

Power to deal with defectives otherwise than at instance of parent, guardian, or Chairman of Board, &c.  
Cf. *ibid.*, s. 4 (Imp.).

9 A defective subject to be dealt with under this Act otherwise than under Paragraph 1. of Section Six of this Act may so be dealt with—

- i Under an order made by a judicial authority on a petition presented under this Act: or
- ii Under an order of a court, or the presiding magistrate or justices, in the case of a defective found guilty of an offence, punishable either with imprisonment, or by commitment to an institution within the meaning of "The Children's Charter": or
- iii Under an order of the Minister, in the case of a defective detained in a prison or mental diseases hospital, or in an institution within the meaning of "The Children's Charter," or in a retreat for inebriates, hospital for inebriates, or charitable institution, or in a place of detention—

but none of such orders shall be made except in the circumstances and in the manner hereinafter specified.

*Examination of Defectives, Examiners, Clinic, &c.*

Examination of defectives.  
Cf. *ibid.*, ss. 3 & 5 (Imp.).  
Illinois  
1915, p. 245,  
Section 7.

10—(1) Subject to the regulations, every person alleged to be a defective and liable to be dealt with under this Act shall undergo or be submitted to an examination (referred to in this Act as the prescribed examination) by Two legally qualified medical practitioners, One of whom shall be approved by the Board for the purposes of this Act; or by One legally qualified medical practitioner in conjunction with an examining psychologist approved by the Board for the purposes of this Act.

Particulars of examination.

(2) The examination shall comprise the ascertainment of, and investigation into, such particulars concerning the bodily (that is to say, physical and medical), mental, and social conditions, the pedagogical, personal, and family history of the person alleged to be defective, as well as any other conditions or circumstances, as may be sufficient to determine whether he is a defective: Provided that only a legally qualified medical practitioner shall make the examination into the bodily (that is to say, physical and medical) condition.

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(3) The particulars of the examination shall be set out on a prescribed form or forms (called in this Act the certificate of the prescribed examination), and the examiners constituting the examining authority shall certify whether the person examined is a defective within the meaning of this Act, and, if so, what is the class of defectives to which he belongs.

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**11** Every certificate of the prescribed examination made and given for the purposes of this Act shall for all purposes be evidence of the facts therein stated as known or made known to or observed by the certifying examiner or examiners concerning the condition of the person to whom the certificate relates.

Certificates to be evidence of certain facts. Cf. 2 Geo. V., 1911, No. 6, s. 10 (N.Z.).

**12**—(1) If a certificate of the prescribed examination, made and given for the purposes of this Act, is found to be in any respect incorrect or deficient, it may, before the reception into an institution of the person in respect of whom it is made or before his being placed under guardianship, or within One month thereafter, with the consent of the judicial authority who made the order, be amended by the examiner or examiners who signed the certificate.

Examiner may, with consent, amend certificate. Cf. *ibid.* s. 14 (N.Z.).

(2) Every certificate of the prescribed examination amended under the provisions of this section shall take effect as if the amendment had been contained therein when the certificate was signed, and the judicial authority shall review his order in accordance with the certificate so amended.

**13** In certifying that an alleged defective is a defective within the meaning of this Act, and the class of defectives to which he belongs, the examiners constituting the examining authority shall endeavour to obtain contemporary evidence of the existence of the mental defect either at birth or from an early age, but such evidence shall not be considered absolutely essential for determining whether an alleged defective is a defective within the meaning of this Act and the class of defectives to which he belongs.

Contemporary evidence of defect at birth or from early age not essential for diagnosis, &c.

**14**—(1) The examiners constituting an examining authority, other than a public servant, or the Director of the Clinic, or a person appointed under Section Sixteen, shall be paid such fees as and in such manner as the Minister directs, in accordance with any scale from time to time prescribed by regulations.

Fees payable to examiners on account of examinations. Cf. 5 Geo V., 1911, No. 6, s. 13 (N.Z.).

(2) Where an order that a defective be sent to an institution or placed under guardianship has been made under this Act, or where a defective has been placed by his parent or guardian in an institution or under guardianship, all fees paid under this section to examiners shall be deemed to form part of the expenses of his maintenance and shall be recoverable in accordance with Section Thirty-two.

(3) Where a defective has been placed under supervision, all fees paid under this section to examiners shall be deemed to form part of the expenses of arranging or providing for his supervision, and shall be recoverable in like manner as in the case of the expenses of the maintenance of a defective in accordance with Section Thirty-two.

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Governor may  
establish  
Psychological  
Clinic.

*Amended No. 51 of 1925  
s. 5.*

**15—**(1) The Governor may from time to time, by Order-in-Council, establish a State Psychological Clinic (in this Act referred to as the "Clinic"), with auxiliary or branch clinics wherever he deems necessary, for the diagnosis of mental deficiency, the classification of mentally defective and other children, the instruction of teachers of special and other classes, and the study of mental deficiency, and for any other purpose appertaining thereto.

(2) The Governor may from time to time, by Order-in-Council, assign any name to such Clinic or any branch thereof, and may at any time, by Order-in-Council, abolish such Clinic or any branch thereof

Director of the  
Clinic, assistants,  
and other officers.

**16** The Governor may, for the purposes of the Clinic, appoint a Director of the Clinic and such assistants and officers as the Governor may deem necessary.

Duties and  
functions of  
Director of Clinic.

**17** Subject to the regulations, the Director of the Clinic shall, under the direction of the Board, have the immediate management and control of the Clinic and its branches, and shall discharge and exercise such duties and functions as are assigned to him under this Act, and such other duties and functions as the Board deem necessary to carry out the purposes of the Clinic.

Director,  
assistants, and  
officers of Clinic  
not to be under  
"Public Service  
Act."

**18** The provisions of any Act for the time being in force for the regulation of the Public Service shall not apply to the Director, or assistants, or officers of the Clinic appointed by the Governor by virtue only of such appointment; but in the case of any assistant or officer being a teacher or officer of the Education Department, the provisions of "The Education Act, 1885," and of any amendments thereof, shall apply unless the regulations hereunder otherwise prescribe.

Duplicate copies  
of certificates to  
be furnished in  
certain cases to  
Director of Clinic.

**19** Where a defective who has not been examined at or by means of the Clinic has been placed in a Government or other institution for defectives or under guardianship, the superintendent or managers of the institution, or the person under whose guardianship he has been placed, shall furnish the Director of the Clinic, or cause him to be furnished, with a duplicate copy of each of the examination certificates, and he shall receive and file them for permanent record.

Ascertainment of  
what persons are  
defectives.  
Cf. 3 and 4 Geo.  
V. No. 28, s. 30(a)  
and s. 31 (Imp.).

**20—**(1) Subject to the regulations, the Director of the Clinic shall make the necessary arrangements, conformably with Section Ten, for—

i. Ascertaining what persons are defectives subject to be dealt with under each of the Subdivisions (a), (b), (c), (d), and (f) of Paragraph II. of Section Six of this Act :

ii.—(a) Subject to the foregoing paragraph, ascertaining what children, not attending schools under the control of the Education Department, are defectives within the meaning of this Act :

*New para. inserted,  
No. 51 of 1925, s. 6*

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(b) Notifying the names and addresses of any such children to the head teacher or principal of the school which they are attending, to the superintendent or matron of any Government institution, or the managers of any institution within the meaning of Section Four of "The Children's Charter," to which they may have been committed, to the Secretary of the Children of the State Department, or, in other cases, to the parent or guardian, if any.

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(2) Subject to the regulations, the Director of the Clinic, with the concurrence of the Minister of Education, shall make the necessary arrangements, conformably with Section Ten, for—

1. Ascertaining what children over the age of Seven, attending State schools, are defectives within the meaning of this Act :
- ii. Ascertaining which of such children are incapable by reason of mental defect of receiving benefit or further benefit from instruction in special schools or classes or in any other suitable way :
- iii. Notifying the names of such children so ascertained to the Director of Education.

In case of doubt as to whether any such child is or is not incapable of receiving such benefit as aforesaid, or whether the retention of a child in a special school or class would be detrimental to the interests of the other children, the matter shall be determined by the Director of Education.

(3) The Director of the Clinic shall keep a register of the names and addresses (together with the examination certificates or copies thereof, case records, and other data on the prescribed forms) of all persons examined under this section.

(4) The Chairman of the Board, or the Director of the Clinic, or any examiner or person authorised in writing by the Board for the purpose, may call upon any person capable of giving information, to furnish any information in his possession necessary or convenient for carrying out the purposes of this section, and it shall be the duty of any such person to furnish such information when called upon for the same.

**21** The word "defectives" or "defective," used in any section of the Education Acts, shall extend to and include any feeble-minded child or moral imbecile, but shall not include any idiot or imbecile.

Interpretation of word "defectives," &c., in Education Acts.  
Cf. 5 Ed. VII.  
No. 32, s. 4.  
(Tas.)

**22** Section Nine of "The Education Act, 1905," is amended by striking out the words "or mute" wherever they occur therein, and inserting in their place the words "mute or other defectives," and the heading to that section is amended by striking out the words "and mute" and inserting in their place the words "mute and other defectives."

Compulsory Education of defectives extended to Sixteen years.  
Cf. 62 and 63  
Vict., Ch. 32, s. 11  
(Imp.).  
5 Ed. VII. No.  
32, s. 9 (Tas.)

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*Requirements as to the Making of Orders.*

Presentation of  
petitions.  
Cf. *ibid.* s. 5,  
(Imp.).

*Amended 16. Jan  
no. 51. s. 7.*

**23**—(1) An order of a judicial authority under this Act shall be obtainable upon petition made by—

- i. Any relative or friend <sup>or the guardian</sup> of the alleged defective : or
- ii. The Secretary of "The Children of the State Department," or a person authorised in writing by him for the purpose :  
or

iii. The Chairman of the Board, or a person authorised in writing by him for the purpose : or

iv. A police officer of or above the rank of sergeant.

(2) Every petition shall be accompanied by the certificate of the prescribed examination, or a certificate that an examination was impracticable, and by a statutory declaration made by the petitioner and by at least One other person (who may be One of the examiners), stating—

- i. That the person to whom the petition relates is a defective within the meaning of this Act, and the class of defectives to which he is alleged to belong ; and
- ii. That that person is subject to be dealt with under this Act, and the circumstances which render him so subject ; and
- iii. Whether or not a petition under this Act has previously been presented concerning that person, or an application for a reception order under "The Mental Diseases Hospitals Act" has previously been made concerning that person, and, if such a petition has been presented, or such an application made, the date thereof and the result of the proceedings thereon ; and
- iv. If the petition is accompanied by a certificate that an examination was impracticable, what were the circumstances which rendered it impracticable.

Petition by a  
friend of  
defective.

(3) If a petition is presented by a friend of the defective, and not by a relative of the defective, it shall contain a statement of the reasons why the petition is not presented by a relative, and of the connection of the petitioner with the person to whom the petition relates and the circumstances under which he presents the petition.

Petition by  
direction of  
Board.

(4) Where the Board is satisfied that a petition under this section should be presented concerning any person, and that any person or official (other than the Chairman of the Board) empowered to present such petition has refused or neglected to cause it to be presented, the Board may direct the Chairman or another member or an officer of the Board to present a petition, and this section shall apply accordingly.

Procedure on  
hearing petitions  
Cf. *ibid.*, s. 6  
(Imp.).

**24**—(1) Upon the presentation of the petition and such documents as aforesaid, the judicial authority shall either visit the person to whom the petition relates or order him to be brought before him.

(2) Proceedings before the judicial authority may, in any case if the judicial authority thinks fit, and shall, if so desired by the person to whom the petition relates, be conducted in private, and in that case no one except the petitioner, the person to whom the petition relates, his

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parents or guardian, the examining authority, and any Two persons appointed for the purpose by the person to whom the petition relates, or by his parents or guardian, and the person or persons signing the statutory declaration accompanying the petition shall, without leave of the judicial authority, be allowed to be present.

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(3) If the judicial authority is satisfied that the person to whom the petition relates is a defective and is also satisfied that he is subject to be dealt with under this Act, the judicial authority may, if he thinks it desirable to do so in the interests of such person, make an order either ordering him to be sent to a Government institution for defectives, or to an institution for defectives the managers of which are willing to receive him, or appointing a suitable person to be his guardian, and the order shall state the class of defectives to which the defective belongs, and the circumstances which render him subject to be dealt with under this Act :

Provided that—

- i. Where the petition is not presented by the parent or guardian the order shall not be made without the consent in writing of the parent or guardian, unless it is proved to the satisfaction of the judicial authority that such consent is unreasonably withheld, or that the parent or guardian cannot be found, but consent shall not be deemed to be unreasonably withheld if withheld with the *bonâ fide* intention of benefiting the defective : and
- ii. Nothing in this section shall prevent an order being made, notwithstanding that the person to whom the petition relates does not appear to the judicial authority to belong to the class of defectives to which he is in the petition alleged to belong, if the judicial authority is satisfied that he is a defective.

Consent of parent or guardian.

Person belonging to class different from that named in petition.

(4) If the judicial authority is not satisfied that the person to whom the petition relates is a defective, and subject to be dealt with under this Act, nor that it is desirable in the interests of such person that an order should be made, the judicial authority may, if he thinks fit, adjourn the case for further evidence or information, and may order that the person to whom the petition relates shall submit himself to such further examination as the judicial authority may direct, or the judicial authority may dismiss the petition :

Adjournment.

Provided that, unless the petition is dismissed, the judicial authority shall order a prescribed examination by an examining authority in any case where the petition was accompanied by a certificate that an examination was not made.

~~25—(1) Where an order has been made that a defective be placed under guardianship, the person under whose guardianship such defective has been placed, or the Board, may make to the judicial authority which made the order, or to any other judicial authority, or, where the original order was not made by a judicial authority, to any judicial authority, an application that such defective be sent to an institution for defectives, and such judicial authority as aforesaid may, on being~~

Variation of orders relating to guardianship. Cf. *ibid.*, s. 7 (Imp.).

*new sub-s. 1.*  
*sub-st.*  
*16 Geo. V. No. 51.*  
*S. 8.*

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Removal of  
guardian.

Procedure in  
cases of persons  
guilty of offences,  
&c.  
Cf. *ibid.*, s. 8  
(Imp.).

~~satisfied that the case is or has become one unsuitable for guardianship,  
order that the defective be sent to an institution for defectives.~~

~~(2) A person appointed under this Act to be guardian of a defective  
may, on the application of the Board or of any other person who appears  
to be interested, be removed from his office by any judicial authority  
and, where a person appointed to be guardian of a defective dies, or  
resigns his office, or is removed from his office, a judicial authority may,  
on the like application, appoint a suitable person to act in his stead.~~

(3) An order under this section shall not be made without giving,  
where practicable, to the relative or other person who presented the  
original petition and to the parent or guardian of the defective, an  
opportunity of being heard.

**26**—(1) Where any person is convicted by a court of any criminal  
offence, punishable in the case of an adult with imprisonment, or where  
any child, on being brought before a Children's Court under "The  
Children's Charter," is found liable to be committed to an institution  
within the meaning of "The Children's Charter," the court may  
either—

- i. If, notwithstanding the absence of any evidence of an examining  
authority, it appears to the court that such person or  
child is a defective, postpone passing sentence or making  
an order for committal to any such institution, and direct a  
police officer of or above the rank of sergeant, or the  
Secretary of the Children of the State Department, to  
have a petition presented to a judicial authority under  
this Act, with a view to obtaining an order that such  
person or child be sent to an institution for defectives, or  
placed under guardianship: or
- ii. If satisfied by the evidence of an examining authority, and  
any other evidence (if any) adduced, that such person or  
child is a defective, in lieu of passing sentence or making  
an order for committal to an institution within the meaning  
of "The Children's Charter," itself make any order which,  
if a petition had been duly presented under this Act, the  
judicial authority might have made, which order shall have  
the like effect as if it had been made by a judicial authority  
on a petition under this Act.

Provided that if the case is one which the court has power to deal  
with summarily, the court, if it finds that the charge is proved, may  
give such directions or make such order as aforesaid without proceeding  
to a conviction, and such a person shall for the purposes of this Act be  
deemed to be a person found guilty of an offence.

(2) The court may act either on the evidence given during the trial  
or other proceedings, or may call for further evidence from another  
examining authority or from any other persons.

(3) Where the court so directs a petition to be presented against a  
person, it may order him to be detained in an institution for defectives  
or in a place of safety for such a time as is required for the presentation  
of the petition and the adjudication thereof.

*new sub-s.  
subct.  
16 Geo. V no. 51 s. 8.*



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(4) Where it appears to any justice or justices by whom a person charged with an offence is remanded or committed for trial that such person is a defective, such justice or justices may order that pending the further hearing or trial he shall be detained in an institution for defectives, or be placed under the guardianship of any person on that person entering into a recognisance for his appearance.

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(5) Where it appears to a police officer of or above the rank of sergeant that any person charged with an offence is a defective, he shall communicate with the Chairman of the Board or, if the said Chairman is not available, the Director of the Clinic, who shall take the necessary steps to ascertain by examination whether such person is a defective within the meaning of this Act, and it shall be the duty of such police officer to bring before the court the certificate of the prescribed examination and such other evidence as to the bodily and mental condition of the alleged defective as may be available: Provided that, where it is intended to bring such evidence before the court, the police officer shall give notice of the intention to the person charged, and to one of his parents or to his guardian, if known.

(6) For the purposes of this section, "court" means any court of competent jurisdiction, and includes a police magistrate, and also any justice or justices.

**27** Where the Minister is satisfied from the certificate or certificates of the prescribed examination by an examining authority that any person who is undergoing imprisonment (except imprisonment under civil process), or is, by order of a court, or justice, or justices, undergoing detention in a place of detention or in an institution within the meaning of "The Children's Charter," or who is detained in a mental diseases hospital, retreat for inebriates, or hospital for inebriates, or is in a charitable institution, is a defective, the Minister may order that he be transferred therefrom, and sent to a Government institution for defectives, or that he be placed under guardianship, and any order so made shall have the like effect as if it had been made by a judicial authority on petition under this Act.

Procedure in case of defectives undergoing imprisonment, &c. Cf. *ibid.*, s. 9 (Imp.).

*Amended*  
16 Geo. V. No. 51, s. 9

*Effect and Duration of Orders, &c.*

**28—(1)** An order that a defective be sent to an institution shall authorise the conveyance of that person to and his reception in the institution mentioned in the order, and his detention in that institution for such period as is hereinafter mentioned, and he shall be liable to be detained in the institution accordingly.

Effect of orders. Cf. *ibid.*, s. 10 (Imp.). Cf. 9 Geo. V. No. 15, s. 47 and s. 115.

(2) An order that a defective be placed under guardianship shall, subject to the regulations, confer on the person named in the order as guardian such powers as would have been exercisable if he had been the father of the defective, and the defective had been under the age of Fourteen years, and the guardian shall also have power to warn persons against supplying intoxicants to him or for his use.

(3) An order that a defective be sent to an institution for defectives or be placed under guardianship shall, together with the certificate or

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certificates of the prescribed examination, be produced to, and left with the superintendent or managers of the institution or the person under whose guardianship the defective is placed.

Duration of  
detention under  
order.  
Cf. *ibid.*, s. 11  
(Imp.).

**29**—(1) An order made under this Act that a defective be sent to an institution or placed under guardianship shall expire at the end of One year from its date, unless continued in manner hereinafter provided:

Provided that orders that persons be sent to an institution shall, unless continued as hereinafter provided, expire at the quarter day next after the day on which the orders would have expired under the above provision.

(2) At any time within One month before the expiry of an order under the foregoing subsection, the Board shall obtain and consider such special report and certificate as is hereinafter mentioned, and shall investigate what means of supervision and protection would be available if the defective were discharged, and if the Board consider that in his interest a continuance of the order is required, it may make an order directing that the order of the judicial authority remain in force for One year after the date upon which otherwise such lastmentioned order would have expired, and thereupon such order shall remain in full force accordingly for One year, such order being hereinafter referred to as a "continued order."

(3) At any time within One month before the expiry of a "continued order," the procedure mentioned in Subsection (2) shall again be adopted by the Board who may thereupon make a further order directing that the order of the judicial authority remain in force for a further period of Three years, and thereupon such order shall remain in full force accordingly, and at the expiration of each successive period of Three years thereafter until the death or discharge of the defective, the same procedure shall be adopted and an order may again be made by the Board for the continuance of the judicial order for a further period of Three years.

(4) A copy of every such order or continued order shall forthwith be served on the defective and his parent or guardian (if any), and, if practicable, upon the person upon whose petition (if any) the defective was sent to the institution or placed under guardianship.

Provided that, where a defective was, at the time of being sent to the institution or placed under guardianship, under Twenty-one years of age, the case shall be reconsidered by the Board within Three months after he attains the age of Twenty-one years.

(5) If on such consideration or reconsideration it appears to the Board that the defective is fit to be discharged, the Board shall order him to be discharged: Provided that if the Board do not order his discharge, the defective, or any person acting on his behalf, or any person upon whose petition the defective was sent to the institution or placed under guardianship, may, within Fourteen days after the service upon him of an order of the Board, appeal to any judicial authority, and such judicial authority shall hold an inquiry as to whether the defective is fit to be discharged.

*Amended 16 Geo. V  
No. 51 s. 10 (2)*

*if he is not an idiot  
or an imbecile*

*next sub-s. inserted  
Et.*

*Words inserted  
Et.*

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(6) Notice of the inquiry shall be given to the Board, and any member thereof shall be entitled, if he so desires, to give evidence at the inquiry.

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Inquiry.  
Cf. 2 Geo. V.  
No. 6, 1911, s. 85  
(8) (N.Z.).

(7) In making the inquiry the judicial authority—

- i. Shall see and examine the defective; and
- ii. May by summons under his hand, require any person to appear before him to testify on oath concerning the subject-matter of the inquiry; and
- iii. May cause a further examination to be made by another examining authority; and
- iv. May hear such evidence on oath as he thinks fit; and
- v. May order any person having the custody or charge of the defective, to produce him before the judicial authority for examination as aforesaid.

(8) Any person who—

*Ib.* s. 85 (9).

- i. Without reasonable justification or excuse fails to appear before the judicial authority in obedience to any such summons; or
- ii. Appears and refuses to be sworn or examined; or
- iii. Without reasonable justification or excuse fails to produce the defective for examination in pursuance of any such order—

shall be liable to a penalty not exceeding Fifty Pounds.

(9) If on any such inquiry the judicial authority is satisfied that the defective is fit to be discharged, he shall, by order under his hand, direct him to be discharged, and he shall be immediately discharged accordingly:

*Ib.* s. 85 (10).

Provided that this subsection shall not apply to any person who is sent to an institution for defectives by order of a court or Minister in accordance with the provisions of Sections Twenty-six and Twenty-seven of this Act, or is legally detained for some other cause, but in such case the judicial authority shall report the result of such inquiry to the Minister.

(10) A defective shall be deemed to be fit to be discharged when his detention as a defective person is no longer necessary in his own or the public interest.

*Ib.* s. 85 (12).

(11) The special report and certificate referred to in Subsection (2) shall be a special report as to the bodily and mental condition of the defective made by an examining authority appointed by the Board, and shall be accompanied by a certificate stating whether the defective is still a proper person to be detained in his own or the public interest in an institution or under guardianship, or is fit to be discharged (as the case may be), and the persons sending the special report shall give the Board such further information concerning the defective to whom the special report relates, as the Board may require.

Cf. 3 & 4 Geo.  
V., c. 28, s. 11 (4).

(12) A certificate under the hand of the secretary to the Board that an order that a defective be sent to an institution or placed under guardianship has been continued to the date mentioned in the certificate shall be sufficient evidence of the fact.

*Ib.* s. 11 (5).

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Judge may direct  
inquiry as to  
condition of  
person detained  
as defective.  
2 Geo. V. No. 6,  
s. 86 (N.Z.).

**30**—(1) A judge of the Supreme Court may, whenever he thinks fit, whether of his own motion or on the application of any person, by order under his hand, direct any one or more persons whom he may select in that behalf to visit and examine any person who the said judge has reason to believe is detained as a defective in any institution, house, or other place, and inquire into and report on such matters relating to that person as the judge thinks fit.

(2) A judge of the Supreme Court may, whenever he thinks fit, whether of his own motion or on the application of any person, and whether any such order as is referred to in the last preceding subsection has been made or not, by order under his hand, direct the superintendent or managers of any institution, or the occupier of any house or other place, in which the judge has any reason to believe or suspect that any person is detained as a defective, or any person having the custody or charge of that person, to bring that person before the said judge in open court or in chambers, for examination at a time to be specified in the order.

(3) If on the examination of the person so ordered to be brought before him, and on the evidence of an examining authority under this Act or other witnesses (power to summon whom to testify on oath in the matter of such examination, and to produce any documents, is hereby given to the judge), it appears to the satisfaction of the judge that such person is not a defective, or should not be detained as a defective, the judge shall by order direct that he shall be immediately discharged, unless the person so detained is sent to an institution for defectives by order of a court or Minister in accordance with the provisions of Sections Twenty-six and Twenty-seven of this Act or is legally detained for some other cause, but in any such case the judge shall report the result of his inquiry to the Minister.

(4) In determining in pursuance of this section whether any person should be detained as a defective, the judge may take into consideration the fact that some relative or friend of that person is able and willing to exercise sufficient supervision and protection of him, and may, as a condition of making an order for his discharge, require an undertaking in writing from such relative or friend to exercise such supervision and protection of the person so discharged for such time and in such manner as the judge requires and as are in the said undertaking set forth. Any person who wilfully fails to fulfil any undertaking so given by him shall be deemed guilty of an offence under this Act.

(5) Nothing in this section shall be deemed to prevent the exercise of any other remedy or proceeding available by or on behalf of any person who is or is alleged to be unlawfully detained, confined, or imprisoned.

Duration of  
detention of  
under orders.  
Cl. 3 & 4 Geo. V.  
No. 28, s. 12  
(Imp.).

**31**—(1) Where a defective has been placed by or with the consent of his parent or guardian, pursuant to Section Eight, in an institution or under guardianship, it shall be lawful for such parent or guardian to withdraw him from the institution or guardianship at any time on giving not less than Fourteen days' notice in writing for the purpose

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to the Board, unless the Board, after considering what means of supervision and protection would be available if he were discharged, determine within Fourteen days after receiving the notice that the further detention of the defective in the institution or under guardianship is required in the interest of the defective or in the public interest, and, where the Board have so determined, no further notice by the parent or guardian shall be allowed till after the expiration of Six months from the last previous notice. A.D. 1920.

(2) Subject to Subsection (1) of this section, a defective who has been placed, as mentioned in that subsection, in an institution or under guardianship may be detained in the institution or under guardianship, and the case shall be reconsidered by the Board at like intervals, and the parent or guardian shall have the like right of appeal as if the defective had been ordered to be sent to the institution or placed under guardianship, and the provisions of Section Twenty-nine shall apply accordingly.

(3) The managers of any certified institution or house may discharge any defective placed there by his parent or guardian on giving One month's notice to the Board and to the parent or guardian of the defective if known: but without prejudice to any obligation of such managers or of any other person under any contract relative to such defective.

*Supplemental.*

**32**—(1) Where an order that a defective be sent to an institution or be placed under guardianship has been made under this Act, the judicial authority which made the order or any other judicial authority, or, where the order is not made by a judicial authority, any judicial authority may, on the application of the petitioner, or of the superintendent or the managers of the institution, or the guardian, as the case may be, or of a person authorised by the Board in that behalf, make an order requiring the defective, or his parent or guardian, or any other person liable to maintain him, to contribute such sum towards the expenses of his maintenance in the institution or of his guardianship, and any charges incidental thereto, including the cost of his conveyance to the institution, and in the event of his death in the institution, his funeral expenses, as, having regard to the ability of such persons respectively, seems reasonable.

Power to recover expenses.  
Cf. *ibid.*, s. 13 (Imp.).

(2) Any such order may, on the application of the superintendent or the managers of the institution in which the defective is for the time being detained, or of the guardian, or of a person authorised by the Board in that behalf, be enforced in a summary way, in the same way as if the order were an order by justices adjudging the payment of a sum of money.

(3) An order made under this section may be varied or revoked by the judicial authority which made it, or any other judicial authority.

(4) Where a defective has been placed by or with the consent of his parent or guardian in an institution or under guardianship, any sum, which the parent or guardian has agreed in writing to contribute towards the expenses of the maintenance or guardianship of the defective, shall be recoverable summarily.

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Provision as to  
contribution  
orders.Cf. *ibid.*, s. 14  
(Imp.).10 Geo. V. No.  
62.

**33** The persons liable to maintain a defective under the age of Twenty-one years against whom an order to contribute towards his maintenance may be made under this Act shall include in the case of illegitimacy his putative father and, if the judicial authority having cognisance of the case thinks fit, a person other than his putative father cohabiting with his mother: Provided that where a defective is an illegitimate, and an order for his maintenance has previously been made against his putative father under "The Maintenance Act, 1919," or any enactment thereby repealed, the judicial authority shall not (unless in view of the special circumstances of the case he thinks it is desirable) make an order for contribution against the putative father, but may order the whole or any part of the payments accruing due under the affiliation order to be made to the Board or such other person as may be named in the order, to be applied towards the maintenance of the defective.

Power to remove  
to place of safety  
pending  
presentation of  
petition.  
Cf. *ibid.*, s. 15  
(Imp.).

**34**—(1) If any officer of, or any person authorised in that behalf by, the Board, or any police officer or probation officer, finds—

- i. Any child under the age of Seventeen years, in circumstances which, in his opinion, constitute such child a "neglected child" within the meaning of the definition thereof contained in Section Four of "The Children's Charter"; or
- ii. Any person of or above the age of Seventeen years neglected, abandoned, or without visible means of support or cruelly treated—

and he has reasonable cause to believe such child or person to be a defective, he may take him to a place of safety, and such child or person may be detained there until a petition under this Act can be presented.

(2) If it appears to a justice, on information on oath laid by an officer of, or person authorised in that behalf by the Board, or any police officer or probation officer, that there is reasonable cause to believe that a defective is neglected or cruelly treated in any place, the justice may issue a warrant authorising any police officer named therein, accompanied by a legally qualified medical practitioner named in the warrant, to search for such person, and, if it is found that he is neglected or cruelly treated and is apparently defective, to take him to and place him in a place of safety until a petition can be presented under this Act, and any police officer authorised by such warrant may enter, and if need be by force, any house, building, or other place specified in the warrant, and may remove such person therefrom.

Transfers from  
institutions for  
defectives to  
mental diseases  
hospitals, and *vice  
versa*.  
Cf. *ibid.*, s. 16  
(Imp.).  
22 Vict. No. 23.  
6 Geo. V. No. 8.

**35**—(1) Where the mental condition of a person detained in an institution for defectives becomes or is found to be such that he ought to be transferred to a mental diseases hospital, the Board, or the superintendent or the managers of an institution for defectives, with the consent of the Board, shall cause such steps to be taken as may be necessary for having a reception order under "The Mental Diseases Hos

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pitals Act" made in respect of him and for his removal to a mental diseases hospital: Provided that, where such person has been placed in the institution by his parent or guardian, the Board or superintendent or managers, as the case may be, shall not cause such steps to be taken until they have given the parent or guardian, wherever practicable, an opportunity of taking them himself. A. D. 1920.

(2) Where the mental condition of a person detained in a mental diseases hospital is found to be such that he ought to be transferred to an institution for defectives, the Board, or the Superintendent of the Mental Diseases Hospital, with the consent of the Board, may cause such steps to be taken as may be necessary for having an order made under this Act that he be sent to an institution for defectives, and for his removal to such institution.

(3) Subject to the foregoing provisions of this section, nothing in this Act shall affect the operation of the provisions of "The Mental Diseases Hospitals Act" in its application to defectives.

**36**—(1) The judicial authority, court, presiding magistrate, or justices, or Minister, in determining the institution (other than a Government institution), to which a defective is to be sent under an order, shall endeavour to ascertain the religious persuasion to which the defective belongs, and the order shall, where practicable, specify the religious persuasion to which he appears to belong, and an institution conducted in accordance with that persuasion shall, where practicable, be selected. Provisions as to religious persuasion. Cf. *ibid.*, s. 17 (Imp.).

(2) A minister of the religious persuasion specified in the order as that to which the defective appears to belong may visit the defective at the institution on such days, at such times, and on such conditions as may be fixed by the Board, for the purpose of affording religious assistance, and also for the purpose of instructing him in the principles of his religion.

(3) Where a defective is sent to an institution (other than a Government institution), which is not conducted in accordance with the religious persuasion to which the defective belongs, the defective shall not be compelled to receive religious instruction or religious ministrations which are not in accordance with his religious persuasion, but shall, as far as practicable, have facilities for receiving religious instruction and attending any religious services which he wishes.

(4) Where an order is made for sending a defective to an institution (other than a Government institution), which is not conducted in accordance with the religious persuasion to which he belongs, the nearest adult relative, or in the case of a child his guardian or the person entitled to his custody, may apply to the Board to remove or send the defective to an institution conducted in accordance with the defective's religious persuasion, and the Board shall, on proof of the defective's religious persuasion, comply with the request of the applicant: Provided that the applicant must show to the satisfaction of the Board that the managers of the institution named by him are willing to receive the defective and that the institution is one suitable to the case.

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Judicial authority defined.

Cf. 53 and 54  
Vict., ch. 5, s. 9  
(Imp.), also  
Cf. 3 and 4  
Geo. V., ch. 28,  
s. 19 (Imp.).10 Geo. V. No.  
55

**37**—(1) The powers of the judicial authority under this Act shall be exercised by a justice specially appointed as hereinafter provided, or by a police magistrate, and any such justice or magistrate shall be a judicial authority for the purposes of this Act.

(2) The Governor may from time to time, by notice in the "Gazette," appoint such and so many persons, being justices, as he deems necessary to exercise the powers conferred by this Act upon a judicial authority, and may in like manner revoke any such appointment.

(3) Every judicial authority shall, in the exercise of the jurisdiction conferred by this Act, have the same jurisdiction and power as regards the summoning and examination of witnesses, the administration of oaths, costs, and otherwise, as are conferred upon him by "The Justices' Procedure Act, 1919," and he shall be assisted, if he so requires, by the same officers as if he were so acting.

## PART III.

## BOARD, &amp;c.

Mental Deficiency Board.  
Cf. *ibid.*, 3 and 4  
Geo. V., ch. 28,  
s. 21.

Constitution of Board.

**38** The Board hereinafter constituted shall, subject to the provisions of this Act, be charged with the general superintendence of matters relating to the supervision, protection, and control of defectives.

**39**—(1) A Board is hereby constituted, to be called "The Mental Deficiency Board."

(2) The members of the Board shall be—

I. The Chief Health Officer for the time being of the State :

II. The Director of the Clinic :

III. Three other members to be appointed by the Governor, One of whom shall be a legally qualified medical practitioner with a knowledge of psychiatry ; One, a person nominated by the Council of the University of Tasmania ; and One, a person nominated by the Director of Education.

(3) The Chief Health Officer for the time being of the State shall, *ex officio*, be Chairman of the Board.

Tenure of office.  
Cf. 4 Geo. V.  
No. 1122, s. 7  
(S.A.).

**40** Every member of the Board appointed by the Governor shall be appointed for a term of Three years, and may from time to time, at the expiration of his term of office, be reappointed for a further term of Three years.

Vacation of office of member.  
Cf. 9 Geo. V.  
No. 38, s. 9  
(Tas.).

**41**—(1) The office of a member appointed by the Governor shall be vacated in case of such member's—

I. Death, lunacy, bankruptcy, filing a petition for liquidation by arrangement or composition with creditors under "The Bankruptcy Act, 1870," or conviction for felony or misdemeanour :

*Proviso inserted  
16 Geo. V. No. 51 A. 11*



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- ii. Absence without leave of the Board from Three consecutive ordinary meetings of the Board, followed by a resolution of the Board declaring the office vacant, which resolution the Board may pass, if it thinks fit, but not later than Six weeks after the last of such Three consecutive meetings: A.D. 1920.
- iii. Absence from the State for Three consecutive months without leave of the Board: or
- iv. Resignation by notice in writing delivered to the Board:
- v. Becoming a member of either House of the Parliament of the State or of the Commonwealth.

(2) For the purposes of Paragraphs ii. and iii. of Subsection (1) of this section, attendance at a meeting by a deputy member appointed by the Governor to act in the place of a member shall be deemed attendance by that member.

**42** Any member of the Board appointed by the Governor may be removed from his office by the Governor.

Removal of member of Board. Cf. 9 Geo. V. No. 71, s. 3 (Tas.).

**43—(1)** The provisions of any Act for the time being in force for the regulation of the Public Service shall not apply to any member of the Board by virtue only of such membership.

Members not to be under Public Service Act. Cf. *ib.* (S.A., s. 9).

(2) Subject to the provisions of this Act the Board may regulate its own procedure.

Board may regulate its procedure.

**44** Every officer appointed under this Act shall be paid, on account of his expenses in travelling to discharge the duties of his office, such travelling allowance as is prescribed.

Travelling expenses.

**45—(1)** Three members of the Board shall constitute a quorum thereof

Quorum.

(2) At all meetings of the Board the Chairman shall preside, and he shall have a deliberative vote only. Should the Chairman be absent from any meeting the members present shall appoint One of their number to act as Chairman thereat, and he shall preside and have a deliberative vote only.

Chairman to preside.

(3) No act or proceeding of the Board shall be invalid or be prejudiced by reason only of the fact at the time when such act or proceeding is done, taken, or commenced, there is a vacancy in the office of any member.

Acts of Board not invalidated by vacancy.

(4) When there is an equal division of votes upon any question it shall pass in the negative.

4 Geo. V. No. 1112 (S.A.), s. 13.

(5) The First meeting of the Board shall be held at such place and time as the Chairman shall, by written notice to each member, appoint.

First meeting.

(6) The Board shall cause entries of all the proceedings of the Board, with the names of the members present at each meeting, and the names of all members voting upon any question for the decision of which a division is called, to be duly made from time to time in books to be provided for the purpose.

Minutes.

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Every such entry shall be signed by the Chairman at the meeting at which such proceeding has taken place or at the next meeting of the Board.

Deputy members.  
*Ibid.* (S.A.), s.  
14.

**46** In the case of the illness, or other incapacity, or absence from the State of any member of the Board appointed by the Governor, or of a vacancy in the office of such a member, the Governor may appoint some person to be a deputy-member of the Board during such suspension, illness, incapacity, or absence, or until such vacancy is filled. Every person so appointed shall, until his appointment is terminated by notice in the "Gazette," have all the powers, rights, and privileges, and perform all the duties and functions of a member of the Board.

Secretary and  
other officers  
of the Board.

**47** The Governor may appoint a Secretary to the Board, who shall be subject to the provisions of "The Public Service Act, 1918," and may also appoint such other officers as he may think fit.

Disqualifications  
Cf. 3 and 4 Geo.  
V., ch. 28, s. 24  
(Imp.).

**48**—(1) A person shall not be qualified to be a member, or secretary of the Board if he is directly or indirectly interested in any institution for defectives, other than a Government institution, under this Act, and any member, or secretary, who becomes so interested shall be disqualified to hold office.

(2) If any person, holding such office as aforesaid, acts when he is disqualified under the provisions of this section he shall be guilty of a misdemeanour.

Powers and duties  
of the Board  
*Ibid.*, s. 25.  
(Imp.).

**49**—(1) Subject to the regulations, the Board shall—

- i. Exercise general supervision, protection, and control over defectives :
- ii. Recommend to the Minister the establishment or abolition of institutions for defectives under this Act :
- iii. Certify, approve, supervise, inspect, and inquire into the state of institutions, colonies, houses, and other places for defectives, and all arrangements made for the care, training, instruction, employment, and control of defectives therein :
- iv. Visit, either through One or more members or through any officer or person or persons authorised in that behalf, defectives in institutions or certified houses or other places, or under guardianship, or (with a view to their certification) elsewhere, and persons who have been placed under the care or supervision of any person as being defectives :
- v. Arrange for, or provide, where possible and desirable, suitable and sufficient supervision and protection for any defective of whom notification has been received by the Chairman of the Board in accordance with Section Seven or concerning whom a request that he be placed under supervision has been received by the Board from a judicial authority : Provided that if such supervision at any time shall appear to

Cf. *ibid.*, s. 30.

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the Board to afford insufficient protection for such defective in his own or the public interest, the Board shall take steps for securing that he be dealt with by being sent to an institution or placed under guardianship in accordance with the provisions of this Act: A.D. 1920.

- vi. Encourage and advise societies or after-care or other committees formed, with the Board's approval, for the purpose of assisting, protecting, and supervising defectives:
- vii. Approve examiners, and prescribe the form and manner of the examination of defectives conformably with Section Ten.
- viii. Take such steps as may be necessary for ensuring suitable treatment of cases of mental deficiency and for investigating improved methods of treating mental deficiency:
- ix. Have the general management and control of the Clinic:
- x. Make an annual report to the Minister for presentation to Parliament, and such special reports as the Minister may from time to time require:
- xi. Administer, in accordance with this Act, moneys provided by Parliament for the purposes of this Act:
- xii. Exercise such other powers and duties as may be prescribed.

(2) Without prejudice to their powers and duties under any regulations which the Governor may make for further or more frequent inspection and visitation, it shall be the duty of the Board, through One or more members or officers, to inspect every certified institution and certified house at least once in each year, and every defective under guardianship at least twice in every year, and through a quorum of the Board to inspect every certified institution and certified house One additional time in each year.

**50** The Board shall be responsible to the Minister for the discharge and exercise of their duties and powers under this Act. Board responsible to Minister.

**51** Nothing in this Act shall affect the powers and duties of the Medical Superintendent of the Mental Diseases Hospital, New Norfolk, under "The Mental Diseases Hospitals Act," with respect to idiots dealt with under that Act, or sent to or placed in the Mental Diseases Hospital, New Norfolk, under this Act; nor shall the Board have any duties and powers with respect to such idiots nor to defectives who, though not idiots, are for the time being, or who might be, received into and provided for in the Mental Diseases Hospital, New Norfolk, under "The Mental Diseases Hospitals Act," except to such extent as may be prescribed by the regulations. Powers of Superintendent of Mental Diseases Hospital reserved. Cf. *ibid.* s. 30

**52** Save as herein otherwise specifically provided, nothing in this Act shall affect the duties and powers of the Education Department under "The Education Act," and the Board shall have no duties with respect to defective children under the control of the Education Department, except those whose names and addresses have been notified by the Director of Education to the Chairman of the Board in accordance with Subsection (1) of Section Seven. Defective children in State schools. Cf. 3 and 4 Geo. V., Ch. 28, s. 30 (Imp.). 8 Geo. V. No. 20, s. 1.

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## PART IV.

## ESTABLISHMENT AND CERTIFICATION OF INSTITUTIONS, &amp;c.

*Government Institutions, Officers, &c.*Governor may  
establish  
institutions.**53**—(1) The Governor may, from time to time, by Order-in-Council—

I. Establish :

II. Abolish—

such Government institutions or colonies, residential training or industrial schools, farm, observation, or other colonies, or homes, or other institutions for the reception, control, care, treatment, instruction, employment, and maintenance of any or all classes of defectives under this Act, and such receiving depôts or places of safety as he deems necessary.

(2) In the case of idiots, until and unless otherwise provided for under this Act, the Mental Diseases Hospital, New Norfolk, shall be deemed to have been established under this Act as a Government institution for the reception, control, care, treatment, and maintenance of idiots.

Appointment of  
officers.

**54** The Governor may, subject to the provisions of any Act for the time being in force for the regulation of the Public Service, from time to time, appoint medical or other superintendents, assistant medical or other assistant superintendents, matrons, nurses, teachers, craftmasters, instructors, and other officers and servants of Government institutions under this Act, with such powers and functions as he deems necessary to carry out the purposes of this Act.

*Institutions other than Government Institutions, &c*Certification of  
institutions.  
3 and 4 Geo. V.,  
ch. 28, s. 36  
(Imp.).

**55** The Board may, upon the application of the managers of premises intended for the reception, control, care, instruction, employment, and treatment of defectives, if satisfied of the fitness of the premises and of the persons proposing to maintain them for such purposes, grant a certificate to the managers to receive defectives therein, and a certificate so granted shall continue in force for the period for which it was granted or until revoked or resigned under this Act, and an institution so certified is in this Act referred to as "a certified institution."

Provisions as to  
certified houses.  
Cf. *ibid.*, s. 49,  
(Imp.).

**56**—(1) A person desirous of receiving defectives at his house for private profit may apply to the Board for a certificate, and the Board, if satisfied of the fitness of the premises and of the applicant, may, if they think fit, on payment by the applicant of the prescribed fee, grant a certificate to the applicant subject to such conditions as they may impose, and a certificate so granted shall continue in force for the period for which it is granted or until revoked or resigned under this Act, and a house in respect of which such a certificate is in force is in this Act referred to as a certified house, and the person to whom such a certificate is granted is referred to as the owner of such house.

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(2) Any defective who may be ordered to be sent to, or may be placed in, an institution under this Act may be ordered to be sent to, or may be placed in, a certified house, and all the provisions of this Act relating to institutions and the defectives therein shall apply to certified houses and the defectives therein : A.D. 1920.

Provided that—

- I. No part of the money provided by Parliament for the purposes of this Act shall be applied towards the expenses of defectives in certified houses : and
- II. The provisions of this Act with respect to the recovery from defectives or the persons liable to maintain them of contributions towards the expenses of their maintenance shall not apply in the case of defectives in, or ordered to be sent to certified houses : and
- III. A special report under Section Twenty-nine of this Act as to the bodily and mental condition of a defective detained in a certified house shall not be made by the medical officer of the house or by any medical practitioner or psychologist directly or indirectly interested in the house.

**57**—(1) Subject to the regulations, a defective who is not an idiot nor an imbecile who has been placed in an institution for defectives under this Act, may be permitted by the Board, on the recommendation of the superintendent or managers of the institution, to leave the institution under licence or on parole, and remain under the supervision and protection of his parent or a guardian or other person approved by the Board :

Provided that—

- I. At any time during the First year of such leave under licence or on parole, the Board may revoke such permission and may bring back such defective to the institution without presenting a petition to a judicial authority, if the Board consider that such recall is necessary in the interest of such defective or in the public interest ; and that
- II. After the expiration of One year's leave under licence or on parole, the Chairman of the Board or any person authorised in writing by him for the purpose, may present a petition to a judicial authority for an order that he be again sent to an institution, if the Board consider that such readmission is necessary in his own or the public interest, unless his parent or guardian take the necessary steps to place him again in an institution in accordance with Section Eight ; and that
- III. The above provisions for leave under licence or on parole shall not apply to any defective who is sent to an institution for defectives by order of a court or Minister in accordance with the provisions of Sections Twenty-six and Twenty-seven of this Act, or is legally detained for some other cause than his mental deficiency.

Defectives on leave from institutions under licence or on parole.  
Cf. (N.Y.).

*Amended*  
*16 Geo. V No. 51 & 12*

*Mental Deficiency.**Amended*

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*16 Geo. V No. 51 s. 12*

(2) The parent or guardian or near relative under whose supervision and protection such defective has been permitted to leave an institution under licence or on parole shall send such reports to the Chairman of the Board on the bodily, mental, and social conditions of such defective, either in person or in writing, and at such times as the Board shall require; and where such parent or guardian or near relative fails to report after being specially requested to do so by the Board, the Board may immediately take steps to bring back the defective to the institution.

(3) Any defective on leave from an institution under licence or on parole as aforesaid shall, at all times during the period of such leave or parole, be accessible to any person authorised in writing by the Board to visit him.

(4) The liability for the maintenance of any such defective as aforesaid shall entirely devolve upon the person under whose supervision and protection he has been permitted to leave an institution for defectives under licence or on parole.

(5) Where the person, under whose supervision and protection a defective has been permitted to leave an institution for defectives under licence or on parole, finds, during the period of such leave, that—

- i. He is unable to provide adequate supervision and protection for such defective; or that
- ii. It is inconvenient for him to do so: or that
- iii. Such defective is uncontrollable and unmanageable: or that
- iv. Such defective has escaped—

he shall immediately inform the Chairman of the Board to that effect, and the Chairman of the Board may take the necessary steps to bring the defective back forthwith to the institution.

Apprehension  
of defectives  
escaping.

Cf. 3 & 4 Geo. V,  
ch. 28, s. 42  
(Imp.).

**58** If a defective in an institution or absent from an institution under licence or on parole escapes, he may be apprehended and brought back to the institution without warrant by any police officer or by the superintendent or managers of the institution or any person authorised in writing by such superintendent or managers or the Chairman of the Board.

Provisions as to  
visiting of  
defectives.

Cf. *ibid.* s. 18  
(Imp.).

**59** The parents or the nearest adult relative or the guardian of a defective in any institution or under guardianship under this Act shall be entitled to visit the defective at such times and at such intervals (not exceeding Six months) and on such conditions as may be prescribed by the Board, except where owing to the character and antecedents of the person proposing to visit the defective, the Board considers that such a visit would be contrary to the interests of the defective: Provided that nothing herein contained shall be construed as limiting any power to grant further facilities for visits to defectives.

*Mental Deficiency*

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## PART V.

## ADMINISTRATION OF ESTATES OF DEFECTIVE PERSONS.

*Committees and Inquiries.***60**—(1) When a defective has been placed—

- i. By his parent or guardian : or
- ii. By any person, with the consent of the parent or guardian, pursuant to Subsection (2) of Section Eight—

in an institution for defectives, or under guardianship, it shall be the duty of such parent or guardian or person forthwith to send, or cause to be sent, notice in writing to the Public Trustee of his having placed such defective in an institution or under guardianship.

(2) Where an order is made by a judicial authority or court or Minister that a defective be sent to an institution or placed under guardianship, it shall be the duty of such judicial authority or court or Minister forthwith to send, or cause to be sent, notice in writing of such order to the Public Trustee.

(3) It shall be the duty of the superintendent or managers of any institution for defectives, or the person under whose guardianship a defective is placed, to send, or cause to be sent, to the Public Trustee notice in writing of the reception, discharge, or death of any defective in such institution or under such guardianship within Twenty-four hours after the reception, discharge, or death occurs.

Notice of placements, reception orders, discharges, and deaths of defectives to be sent to Public Trustee.

No. 1122, 1913, s. 107 (S.A.).  
No. 6, 1911, s. 87 (N.Z.).

**61**—(1) The Public Trustee shall have the custody and administration of the estate of every defective—

- i. Who is received into an institution or placed under guardianship : or
- ii. Who, when discharged from an institution or from being under guardianship, is not declared capable of managing his own affairs, though capable of managing himself.

(2) The Public Trustee shall have in respect of such estate the same powers, duties, and functions as if he had been appointed the committee thereof under the provisions of this Act : or

Provided that this section shall not apply in the case of a defective of whose estate a committee or administrator has been appointed under this Act.

(3) The powers, duties, and functions of the Public Trustee under this section in respect of the estate of any defective shall cease—

- i. When such defective dies, and the Public Trustee receives notice thereof in accordance with the foregoing section : or
- ii. When a committee of such estate is appointed under the provisions of this Act : or
- iii. When such defective is discharged under this Act, and it is stated in the notice of discharge, sent to the Public Trustee in accordance with the foregoing section, that he is able to manage himself and his own affairs.

Public Trustee to manage the estates of defectives except in certain cases.

*Ibid.*, S.A., s. 108.  
*Ibid.*, N.Z., s. 88.

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Public Trustee or  
other person  
appointed  
committee of  
estate without  
inquiry.

*Ibid.*, S.A., s. 109.  
*Ibid.*, N.Z., s. 89  
(See 8 Geo. V.  
No. 18, s. 2.)

**62**—(1) The Supreme Court may, on petition by the Public Trustee, or any other person, appoint the Public Trustee or, subject to Sections Eighty and Eighty-one, any other person or persons as the committee of the estate of any defective in an institution or under guardianship.

(2) Any committee appointed under this section shall have the same powers, duties, and functions as if he had been appointed after inquiry by the court in accordance with the provisions in that behalf hereinafter contained.

(3) Any committee appointed under this section shall continue in office until the defective of whose estate he is committee dies, or the order appointing him as such committee is rescinded by the court, notwithstanding the fact that such defective is discharged from an institution or from being under guardianship.

(4) The court may at any time rescind the order appointing such committee, on petition by any person and upon proof that the person, of whose estate a committee has been appointed under this section, is of sufficient ability to manage himself and his own affairs, and that he is not a defective within the meaning of this Act.

(5) Subject to Sections Eighty and Eighty-one, the court may at any time, on the petition of any person, and on proof that there is good cause for so doing, make an order appointing a new committee in lieu of any committee previously appointed.

Inquiry as to  
whether a person  
alleged to be  
defective is a  
defective and  
incapable of  
managing his  
affairs.

Cf. *ibid.* S.A.,  
ss. 110-112.  
*Ibid.* N.Z., ss. 86  
and 90-92.

**63**—(1) The Supreme Court may, on the petition of the Public Trustee, or of any other person, order an inquiry to be held as to whether any alleged defective, either in or out of the State, is a defective within the meaning of this Act, and incapable of managing his affairs.

(2) If the person so alleged to be a defective is in the State, he shall have notice, as prescribed, of the presentation of the petition.

(3) The inquiry shall be held in accordance with the order of the court either by a judge or by a police magistrate.

(4)—

- i. If the person as to whom the inquiry is held is in the State, the judge or magistrate shall, where practicable, direct such person to undergo or submit himself to an examination by an examining authority; and
- ii. The examining authority shall forward to the judge or magistrate the certificates of the examination;
- iii. The judge or magistrate shall then personally examine such person alleged to be mentally defective regarding his ability to manage his own affairs, and for this purpose the said judge or magistrate may make an order directing such person to attend before him at the time and place specified in the order for such examination, or directing any person, having the custody of such person alleged to be mentally defective, to bring him before the said judge or magistrate for examination at the time and place so specified;



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iv. The judge or magistrate may also direct the examining authority and any other persons to attend the inquiry at the time and place specified, and to testify, on oath, concerning the subject-matter of the inquiry. A.D. 1920.

(5) If the judge or magistrate holding the inquiry finds that the person as to whom the same is held is a defective within the meaning of this Act, and incapable of managing his affairs, the said judge or magistrate shall certify his finding to the court. Certificate to Supreme Court.

**64** If any person is so found to be a defective within the meaning of this Act, and to be incapable of managing his affairs, the court may appoint the Public Trustee or, subject to Sections Eighty and Eighty-one, any other person or persons whom the court thinks fit, to be the committee of the estate of such person. Supreme Court may appoint committee.  
S.A., s. 113.  
N.Z., s. 93.

**65**—(1) Where it is, by the report of the Public Trustee, or by affidavit, or otherwise established to the satisfaction of the court— Committee appointed without inquiry when estate not over £1000.

i. That any person is a defective within the meaning of this Act, and incapable of managing his affairs: and Ibid., S.A., s. 114.

ii. That the value of the estate of such person does not exceed One thousand Pounds, or that the income of his estate does not exceed Fifty Pounds per annum—

the court may, without ordering any inquiry—

i. Find that such person is a defective, within the meaning of this Act, and incapable of managing his affairs; and

ii. Appoint the Public Trustee, or, subject to Sections Eighty and Eighty-one, any other person or persons whom the court thinks fit, to be the committee of the estate of such defective.

(2) The application for an order under this section may be made by the Public Trustee or any other person, and if the person concerning whose estate the order is sought is in the State, he shall have notice, as prescribed, of the application.

**66** Subject to Sections Eighty and Eighty-one, the court may at any time, and from time to time, appoint any person or persons to be the committee of the estate of any defective in lieu of any committee already appointed, whether appointed before or after the commencement of this Act. Supreme Court may appoint new committee.  
S.A., s. 115.  
N.Z., s. 94.

**67**—(1) Where, on any inquiry, or examination, or hearing of a petition under Part II. of this Act, or any inquiry or application under this Part, it appears that a defective is incapable of managing his affairs, but is not incapable of managing himself, it may be specially so found and certified. Provision for commitment of estate only.  
Ibid., S.A., s. 116.  
Ibid., N.Z., s. 95.

(2) Every such special finding and certificate shall be brought before a judge, who shall thereupon make all such orders and direct all such acts to be done as may be necessary or proper relative to the commitment, management, and application of the estate of such defective.

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Inquiry with a view to rescission of order appointing committee when person found capable of managing his own affairs.

S.A., s. 117.  
N.Z., s. 96.

**68**—(1) When any person has been found, on inquiry under Section Sixty-three of this Act, to be a defective and incapable of managing his affairs, the court may at any time, on the petition of any person, and on proof that such defective is not at the time in an institution or under guardianship or supervision, direct an inquiry to be held as to whether or not he is incapable of managing his affairs.

(2) Every such inquiry shall be held in the same manner, with all necessary modifications, as an inquiry under the provisions hereinbefore contained.

(3) The judge or magistrate holding such inquiry shall certify his finding thereon to the court, and if he certifies that such person is capable of managing his affairs, the court may rescind the order appointing a committee of his estate, and the former inquiry shall thereupon be deemed to be superseded.

(4) When a committee of the estate of any person has been appointed under section Sixty-five, the court may, on the application of any person, and on such proof as mentioned in Subsection (1) of this section, and such further evidence as it deems sufficient, itself decide, without any inquiry whether or not such person is incapable of managing his affairs. If satisfied that he is capable of managing his affairs, the court may rescind the order appointing a committee of his estate.

(5) Save as in this section provided, no proceedings shall be taken to rescind a finding in proceedings under Section Sixty-five, that a person is a defective and incapable of managing his affairs.

Committee in case of defective outside Tasmania.

S.A., s. 118.  
N.Z., s. 97.

**69**—(1) When it is proved to the satisfaction of the court that—

(a) Any person is lawfully detained as a defective in any place outside the State; or

(b) Any person resident in any place outside the State has been found to be a defective in any inquiry held by or by the authority of any court having jurisdiction to appoint, in the place where that person so resides, a committee or other administrator of the estate of that person in the State—

it shall be lawful for the court, on the petition of the Public Trustee or of any other person, to appoint the Public Trustee or, subject to Sections Eighty and Eighty-one, any other person or persons to be the committee of the estate of the person so detained as or so found to be a defective.

(2) Any person so appointed shall have the same powers, duties, functions, and liabilities as if he had been appointed after inquiry held in accordance with the provisions hereinbefore contained.

(3) Any order, appointing a committee under this section, may be rescinded in the same manner as is provided in the foregoing section.

(4) Subject to Sections Eighty and Eighty-one, the court may at any time make an order appointing the Public Trustee or any other person or persons to be the committee in lieu of any committee appointed under this section.

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**70** The court may order the costs, charges, and expenses of the presentation of any petition for an inquiry under this Act, and of the execution of such inquiry, and of any proceedings consequent on any such inquiry, and of any application under this Part, to be paid either by the party presenting the petition or making such application, or by the party opposing the same, or out of the estate of the person in respect of whom the inquiry is held or sought or the application is made, or partly in one way and partly in another, as the court in each case thinks proper.

A.D. 1920

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Court to make order as to payment of costs of inquiry.

S.A., s. 119.  
N.Z., s. 98

*Powers of Public Trustee as Committee or Administrator.*

**71** When the Public Trustee is appointed under this Act as the committee of the estate of any defective or becomes authorised by this Act to administer the estate of any such person, the estate shall not thereby become vested in the Public Trustee, but he shall be entitled to the possession and management of the same in accordance with the provisions hereinafter contained.

Property not to vest in Public Trustee when acting as committee or administrator.

S.A., s. 120.  
N.Z., s. 99.

**72** The Public Trustee, being appointed under this Act as the committee of the estate of any person who is a defective, or being authorised by this Act to administer the estate of any such person, may, without the leave of the court, but subject to any order of the court to the contrary, do any of the following things :—

Powers of Public Trustee, exercisable without sanction of Court.

S.A., s. 121.  
N.Z., s. 100.

- i. Take possession of all the property of such person :
- ii. Sell any property of such person, other than freehold or leasehold property, either by public auction or private contract, and subject to such conditions as the Public Trustee thinks fit :
- iii. Lease or concur in leasing any property of such person for any term not exceeding Two years (to take effect in possession within Six months of the date of the lease), or from year to year, or for a monthly, weekly, or other like tenancy, or at will :
- iv. Repair, and insure against fire or accident, any property of such person :
- v. Pay all rates, taxes, insurance premiums, or other outgoings payable in respect of the property of such person, or under any policy of insurance of any kind :
- vi. Surrender any policy of life assurance of such person :
- vii. Grant powers of attorney to any person in or out of the State to do any act or thing with respect to the property of the person of whose estate he is committee or administrator, which the Public Trustee can do as committee of such estate, or as authorised to administer such estate :
- viii. Institute or defend, in his own name or in the name of the person of whose estate he is committee or administrator, any action, suit, or other proceeding concerning the property of such person, and suffer judgment to go by default, or consent to any judgment, decree, or order in the action, suit, or proceeding, upon such terms as the Public Trustee thinks fit :

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- ix. Compromise any claims or demands made against such person or his estate, upon such terms as the Public Trustee thinks fit, and upon such evidence as he deems sufficient, and submit any such claims or demands to arbitration, and do all acts and things necessary to render any such compromise or arbitration effectual :
- x. Take proceedings to cause to be adjudicated a bankrupt or placed in liquidation any person or company indebted to the person of whose estate he is committee or administrator, and vote and act either personally or by proxy at all meetings of creditors, and in all other matters relating to the bankruptcy or liquidation :
- xi. Take criminal proceedings concerning the property of such person :
- xii. Demand, receive, and recover all moneys payable or belonging to such person :
- xiii. Apply moneys belonging to such person, whether arising from real or personal property, and whether income or capital, in or towards the payment of any debt, obligation, or liabilities of such person, or incurred by the Public Trustee in the exercise, in respect of him or his estate, of the powers vested in the Public Trustee by this Act :
- xiv. Surrender, assign, or otherwise dispose of, with or without consideration, any onerous property belonging to such person :
- xv. Surrender or concur in surrendering any lease, under which such person is the lessee or the successor in title of the lessee, and accept a new lease :
- xvi. Accept a surrender of any lease under which such person is the lessor or the successor in title of the lessor :
- xvii. Carry out and perform contracts entered into by such person before the Public Trustee was appointed as the committee of his estate or became authorised to administer it :
- xviii. Bring lands under the provisions of "The Real Property Acts" :
- xix. Apply, in his discretion, and in such manner and to such extent as he thinks fit, any moneys belonging to such person, whether arising from real or personal property, and whether income or capital, for the maintenance of such person, or of the husband or wife of such person, or for the maintenance, education, or advancement of the children or grandchildren of such person, or, in the event of the death of such person, for the payment of the expenses of his funeral.

25 Vict. No. 16.

Powers of Public Trustee exercisable with sanction of Court. S.A., s. 122. N.Z., s. 101.

**73** The Public Trustee, being appointed under this Act as the committee of the estate of any person who is a defective, or being authorised by this Act to administer the estate of any such person, may, with the sanction of an order of the court, do any of the following things :—

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- i. Sell any freehold or leasehold property of such person by public auction or private contract in such manner and on such terms and conditions as the Public Trustee thinks fit :
  - ii. Make exchange or partition of any property belonging to such person, and give or receive any money for equality of exchange or partition :
  - iii. Grant or concur in granting leases of any property of such person for such terms and on such covenants and conditions as the Public Trustee thinks fit :
  - iv. Execute any power of leasing vested in any such person having a limited estate only in the property over which the power extends :
  - v. Expend money in the improvement of any property of such person, by way of building or otherwise :
  - vi. Carry on any trade or business of such person :
  - vii. Agree to an alteration of the conditions of a partnership into which such person had entered, or join in dissolving such partnership, and dispose of the property thereof, or the interest of such person therein and in the property thereof :
  - viii. Exercise any power, or give any consent required for the exercise of any power, where the power is vested in such person for his own benefit or the power of consent is in the nature of a beneficial interest in such person :
  - ix. Expend any moneys belonging to such person in the maintenance, education, or advancement of the husband or wife of such person, or of any relative of such person, or of any person wholly or partially dependent on such person, or continue such other acts of bounty or charity exercised or promised to be exercised by such person as the court, having regard to the circumstances and the amount or value of the estate of such person, considers proper and reasonable.

**74** The Public Trustee, being appointed under this Act as the committee of the estate of any person who is a defective, or being authorised by this Act to administer the estate of any such person, may, with the sanction of an order of the court, mortgage or charge (with or without a power of sale, and on such terms as the Public Trustee thinks fit) any property of such person for the purpose of raising or securing, or repaying, with or without interest, money which is to be or which has been applied to all or any of the purposes following :—

- i. The payment of the debts or engagement of such person :
- ii. The discharge of any incumbrance on his property :
- iii. The payment of any debt or expenditure incurred for the maintenance of such person or for the maintenance and education of his family, or otherwise for his benefit :
- iv. The payment of or provision for the expenses of the future maintenance of such person or the future maintenance and education of his family :

Public Trustee may, with sanction of court, execute mortgages for certain purposes.

S.A., s. 123.  
N.Z., s. 102.

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- v. The improvement or protection of the property of such person :
- vi. The payment of any debts or liabilities incurred by the Public Trustee in the exercise of the powers conferred upon him by this Act in respect of the custody and administration of the property of such person.

Exercise of powers without sanction of court where estate does not exceed £500.  
S.A., s. 124.  
N.Z., s. 103.

**75**—(1) If the Public Trustee files in the office of the court a certificate signed by him that after due inquiry he believes that the value of the estate of any person, being a defective, of which he has been appointed the committee under the Act, or which he is authorised by this Act to administer, does not exceed the sum of Five hundred Pounds, after deducting all debts and liabilities payable thereout, the Public Trustee may thereafter exercise in respect of that estate, without the sanction of an order of the court but subject to any order of the court to the contrary, any of the powers conferred upon him by Sections Seventy-three and Seventy-four.

(2) If at any time after the filing of such a certificate the Public Trustee has reason to believe that the value of the estate, after making such deductions as aforesaid, exceeds the sum of Five hundred Pounds, he shall not thereafter exercise any of the said powers without the sanction of an order of the court; but nothing in this subsection shall so operate as to invalidate anything done by the Public Trustee in pursuance of Subsection (1) hereof.

Certificate by Public Trustee of his appointment as committee, &c., to be received in evidence.  
S.A., s. 125.  
N.Z., s. 107.

**76** A certificate, signed by the Public Trustee, certifying that he has been appointed under this Act as the committee of the estate of any person who is a defective, or that he is authorised under this Act to administer the estate of any such person, and stating the date at which he was so appointed or became so authorised, and that such appointment or authority is still in force, shall, until the contrary is proved, be sufficient evidence of the facts so certified and stated.

Capital moneys to form part of common fund of Public Trust Office.  
Cf. N.Z., s. 108.

**77** All capital moneys coming to the hands of the Public Trustee under the provisions of this Act shall form part of the common fund of the Public Trust Office, and shall be entitled to the guarantee which is afforded to that common fund.

Provisions of "Public Trust Office Act" to apply to estates of defectives.  
N.Z., s. 109.  
3 Geo. V. No. 26.

**78** Every estate of which the Public Trustee is appointed the committee or which he is authorised by this Act to administer shall be deemed to be placed in the Public Trust Office, and to be administered under "The Public Trust Office Act, 1912," and, subject to the provisions of this Act, all the provisions of the said Act shall, so far as applicable, extend and apply accordingly to that estate and to the administration thereof.

Public Trustee may obtain information on oath.  
S.A., s. 127.  
N.Z., s. 113.

**79**—(1) The Public Trustee shall have power, in the execution of his powers and duties under this Act, to summon persons before him, or before some person appointed in writing by him in that behalf;

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and the Public Trustee or the person so appointed shall have power to administer oaths and take evidence as to any matters relating to the estate and affairs of any person of whose estate the Public Trustee is committee or whose estate he is administering, and to require the production of books and documents relating to those matters. A.D. 1920.

(2) Any person on whom any such summons is served by delivering it to him or by leaving it at his usual place of business or abode, who, without such justification or excuse as the magistrate or justices hearing the charge consider reasonable, fails to appear according to the exigency of the summons, or, being present, refuses to be sworn or give evidence or to answer such questions as are put to him by the Public Trustee or the person so appointed as aforesaid, or to produce any books or documents required by the summons to be produced, shall be guilty of an offence against this Act, and shall be liable to a penalty not exceeding Fifty Pounds.

*Committees other than the Public Trustee.*

**80**—(1) No person other than the Public Trustee shall be appointed under this Act as the committee of the estate of any defective, unless it is proved to the satisfaction of the court that there is some sufficient reason why such person should be so appointed in preference to the Public Trustee.

When person other than the Public Trustee may be appointed committee.

(2) When any application is made to the court to appoint any other person than the Public Trustee as the committee of the estate of any person who is a defective, notice of the application shall be given to the Public Trustee by the person making the same.

S.A., s. 128.  
N.Z., s. 115.

**81**—(1) No person other than the Public Trustee shall be appointed under this Act as the committee of the estate of any defective until he has given to the Public Trustee such security as the court directs and approves for the due administration of the estate.

Person so appointed to give security to Public Trustee.

(2) Such security may be a bond, with or without a surety or sureties, or such other security as the court directs and approves.

S.A., s. 129.  
N.Z., s. 117.

(3) The Court may at any time, on the application of the Public Trustee, require such committee to give to the Public Trustee further or other security for the due administration of the estate.

(4) The court may at any time give leave to the Public Trustee to enforce any such security, and the Public Trustee shall thereupon proceed by action or otherwise to enforce the same accordingly. All moneys so received by the Public Trustee shall be deemed part of the estate of which such person is or was the committee, and all costs and expenses so incurred by the Public Trustee shall be paid out of the said estate.

**82** When any person other than the Public Trustee has been appointed under this Act as the committee of an estate, such person shall have, in respect of the estate, such of the powers conferred on the Public Trustee by Sections Seventy-two to Seventy-five inclusive, as the court, in the order appointing the committee or in any subsequent order or orders, directs.

Powers of such committee.

S.A., s. 130.  
N.Z., s. 116.

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Variation of  
order.

**83** On the application of the Public Trustee or any relative of the person of whose estate such committee is appointed, the order whereby he was so appointed, or any such subsequent order, may from time to time be varied or rescinded by the Court.

Statement as to  
estate to be  
rendered to  
Public Trustee.S.A., s. 131.  
N.Z., s. 118.

**84** - (1) It shall be the duty of every person, other than the Public Trustee, appointed under this Act, as the committee of the estate of any defective, to render to the Public Trustee, at such times and in such form as the Public Trustee directs, a statement showing the property comprised in the estate, and the manner in which such property has been administered and applied, and the condition of such property, and such other particulars relating to the said estate as the Public Trustee directs.

(2) Every such statement shall be verified by the statutory declaration of the committee, and, where the Public Trustee so directs, shall be supported by vouchers.

(3) If any committee fails or refuses to render any such statement, verified as aforesaid, in the manner and at the times directed by the Public Trustee, he shall be guilty of an offence against this Act, and shall be liable to a penalty not exceeding Fifty Pounds.

(4) The Public Trustee may cause any such statement or the accounts relating thereto to be examined and reported upon by any person appointed by him in that behalf.

*Supplemental.*Public Trustee  
may apply to  
court for  
directions.

N.Z., s. 114.

**85** Without restricting any other powers and authorities conferred by this Act, the Public Trustee may apply to the court, *ex parte*, for directions with respect to the exercise of any of the powers, authorities, and discretions conferred upon him by this Act with respect to the estate of any person who is a defective, and the court may, on such application, make such order as it thinks fit.

Exercise of  
powers vested in  
a defective.S.A., s. 133.  
N.Z., s. 104.

**86** When a power is vested in any defective in the character of trustee or guardian, or the consent of such defective to the exercise of a power is necessary in the like character or as check upon undue exercise of the power, and it appears to the court to be expedient that the power should be exercised or the consent given, the committee (if any) of the estate of such defective, or the Public Trustee being authorised by this Act to administer such estate, may, in the name and on behalf of such defective, and with the sanction of an order of the court made upon the application of any person interested in the exercise of the power, exercise such power or give the consent in such manner as the order directs.



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**87** Where under this Act the Public Trustee or any other person appointed as the committee of an estate, or the Public Trustee being authorised by this Act to administer an estate, exercises, under order of the court, in the name and on behalf of any person who is a defective a power of appointing new trustees, the persons who after and in consequence of the exercise of the power are the trustees shall have all the same rights and powers as they would have had if they had been appointed by order of the court under "The Trustee Act, 1898"; and the court may in such case, where it seems to be expedient, make any such order respecting the property subject to the trust as might have been made in the same case under the provisions of the said Act on the appointment thereunder of the new trustees.

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Appointment of new trustees under power to have effect to appointments by court, and like orders may be made as under any law relating to trusts.

S.A., s. 134.

62 Vic. No. 34.

**88**—(1) The Public Trustee or other person appointed as the committee of the estate of any defective, or the Public Trustee, being authorised by this Act to administer the estate of any defective, may, in the name and on behalf of such defective, execute and do all such assurances and things as he deems necessary for effectuating any of the powers conferred upon him by this Act or by any order of the court; and notwithstanding "The Real Property Acts," or any other Act or law, all assurances and things so executed or done shall have the same force and effect as if executed or done by such person himself, he not being mentally defective.

Committee or Public Trustee may execute assurances on behalf of a defective.

S.A., s. 135.

N.Z., s. 105.

(2) Where under any power conferred by or under this Act, any real estate is sold, mortgaged, or charged, an effectual conveyance, transfer, mortgage, or charge may be made of any interest in such estate of a married woman, who is a defective, without any acknowledgment by her.

**89** Notwithstanding anything in this Act, the Public Trustee or other person appointed as the committee of the estate of any person who is a defective, or the Public Trustee being authorised by this Act to administer the estate of any such person, shall, in the exercise of any power conferred by this Act, be subject to any order made in the matter by the court.

Committee and Public Trustee subject to orders of court.

S.A., s. 136.

N.Z., ss. 106, 116.

**90**—(1) No person of whose estate the Public Trustee or any other committee has been appointed, or whose estate the Public Trustee is by this Act authorised to administer, shall be capable, without the leave of the court, of making any conveyance, transfer, lease, mortgage, or other disposition of his property, or of any part thereof, or of entering into any contract, except for necessities; and every such conveyance, transfer, lease, mortgage, or other disposition, and every such contract, other than for necessities, shall be voidable by such person or by the Public Trustee or other committee on his behalf.

Limitation of contractual powers of person of whose estate a committee or administrator appointed

S.A., s. 137.

N.Z., s. 111.

(2) The court may, by order, give leave to any such person to make any conveyance, transfer, lease, mortgage, or other disposition of his property, or of any part thereof, or to enter into any contract, if the court is satisfied that such conveyance, transfer, lease, mortgage, disposition, or contract is for the benefit of such person, and that he consents thereto with adequate understanding of the nature thereof.

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(3) Nothing in this section shall affect the law relating to the validity of wills or other testamentary dispositions.

(4) Nothing in this section shall invalidate any conveyance, transfer, lease, mortgage, disposition, or contract made or entered into by any such person if the other party thereto acted in good faith without knowledge that a committee had been so appointed or that the Public Trustee was so authorised to administer the estate.

Maintenance payable out of estate.

N.Z., s. 112.

**91**—(1) All expenses incurred by the Public Trustee in respect of the maintenance of any defective, or the administration of his estate, shall be charged against and payable out of that estate; and, in addition, there shall be payable in respect of all moneys forming part of that estate, and coming under the control of the Public Trustee, the same commissions and other charges as are prescribed by regulations made under Section Sixty of "The Public Trust Office Act, 1912," to be paid out of estates placed in the Public Trust Office.

(2) The amount of all deductions for expenses, commissions, and other charges shall be paid to the Public Trust Office Expenses Account.

(3) The expenses, commissions, and other charges aforesaid shall be payable out of the estate, although such defective dies or the estate otherwise ceases to be under the administration of the Public Trustee before payment thereof.

Power to transfer stock of a defective in certain cases.

S.A., s. 139.

**92** Where any stock is standing in the name of or is vested in a committee (other than the Public Trustee) of the estate of any defective as such committee, and—

(a) Such committee dies intestate or becomes insane or resides out of the State; or

(b) It is uncertain whether such committee is living or dead; or

(c) Such committee neglects or refuses to transfer the stock, or to receive and pay over the dividends thereof, as the court directs—

the court may order some person to transfer the stock or any part thereof to or into the name of a new committee or the Public Trustee or into court or otherwise, and to receive and pay over the dividends thereof in such manner as the court directs.

Transfer of stock in name of a defective residing out of State.

S.A., s. 140.

**93** Where any stock is standing in the name of or is vested in a person residing out of the State, the court, upon proof to its satisfaction that such person has been declared a defective and that his personal estate has been vested in a person appointed for the management thereof, according to the laws of the place where he is residing, may order some person to make such transfer as the court directs of the stock or any part thereof to or into the name of the person so appointed or otherwise, and to receive and pay over the dividends thereof in such manner as the court directs.

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**94** Where an order is made under Section Ninety-two or Ninety-three for the transfer of stock, the person to be named in the order for making the transfer shall be some proper officer of the bank, company, or society whose stock is to be transferred.

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Who shall be appointed to make transfer.

S.A., s. 141.

**95** Nothing in this Act contained shall subject the property of any person, or any part thereof, to the debts or demands of his creditors, further or otherwise than as the same is subject thereto by due course of law apart from this Act

Act not to subject person's property to debts, to which it is not otherwise subject.

S.A., s. 142.

## PART VI.

## GENERAL PROVISIONS, OFFENCES, AND PENALTIES.

**96**—(1) It shall not be lawful for a person without the consent of the Board to undertake the care and control of more than One person who is a defective, or who is placed under his care as being a defective elsewhere than in an institution, and if any person contravenes this provision, he shall be guilty of a misdemeanour.

Offences with respect to the reception and detention of defectives.

3 and 4 Geo V.,  
Ch. 28, s. 51  
(Imp.).

(2) Where a person undertakes the care and control of any person who is a defective or is placed under his care as being a defective elsewhere than in an institution, he shall, within Forty-eight hours after the reception of such person, give notice thereof in the prescribed form to the Board, and if he fails to do so, he shall be guilty of an offence under this Act.

(3) If any superintendent or manager of any institution for defectives, or the owner of a certified house, or the guardian of a defective, detains a defective, or exercises any of the powers conferred upon him by this Act after he has knowledge that those powers have expired, he shall be guilty of a misdemeanour.

(4) Nothing in this section shall apply to or affect any person who, under "The Mental Diseases Hospitals Act," or the Education Acts, receives or detains any person in accordance therewith, notwithstanding such lastmentioned person is a defective.

22 Vic. No. 23.

**97** If any person secretes a defective who is sent to or placed in any institution, or induces or knowingly assists any such defective, or a defective who has been permitted to leave an institution under licence or on parole, or who is absent from such institution without licence, or a defective under guardianship or in a place of safety under this Act, with a view to escape or to break any conditions of his detention, or guardianship, or licence, he shall be guilty of an offence under this Act.

Offences in relation to institutions, &c.  
*Ibid.* s. 53  
(Imp.).

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Offence of  
supplying  
intoxicants  
contrary to  
warning.

*Ibid.*, s. 52  
(Imp.).

**98** If any person, having been warned by a person appointed to be guardian of a defective under this Act, or by a person under whose supervision a defective has been placed, or under whose care a defective has been permitted to leave an institution under licence or on parole, not to supply intoxicants to or for the use of such defective, knowingly supplies any intoxicant to or for the use of such defective, he shall be guilty of an offence under this Act :

Provided that a person shall not be guilty of an offence under this section if the person giving the warning refuses, when required so to do, to produce the authority under which he acts.

Obstruction.

Cf. *ibid.*, s. 54  
(Imp.).

**99**—(1) Any person who obstructs any member or officer of the Board or Director of the Clinic or examiner, or other person authorised in writing by the Board or the Chairman of the Board or the Director of the Clinic to discharge any duty or exercise any power for the purposes of this Act, in the discharge of such duty or in the exercise of such power conferred by or under this Act, shall be guilty of a misdemeanour.

(2) Any person who wilfully obstructs any other person or persons authorised under this Act by any order in writing by the Minister or the Board to visit and examine any person alleged to be a defective, or to inspect or inquire into the state of any institution, certified house, prison, or other place wherein any person represented to be a defective is confined or alleged to be confined, in the execution of such order, shall be guilty of an offence under this Act.

Ill-treatment.

*Ibid.*, s. 55  
(Imp.).

**100** If any superintendent or manager, medical or other officer, teacher, instructor, matron, nurse, attendant, servant, or other person employed in an institution or certified house, or any person having charge of a defective, whether by reason of any contract, or of any tie of relationship, or marriage, or otherwise, illtreats or wilfully neglects the defective, he shall be guilty of a misdemeanour.

Protection of  
defectives from  
acts of sexual  
immorality,  
procuration, &c.  
*Ibid.*, s. 56  
(Imp.).

**101**—(1) Any person—

- i. Who unlawfully and carnally knows, or attempts to have unlawful carnal knowledge of, any woman or girl under care or treatment in an institution or certified house, or whilst on leave therefrom or under guardianship or supervision under this Act : or
- ii. Who procures, or attempts to procure, any woman or girl who is a defective to have unlawful carnal connection with any person or persons : or
- iii. Who causes or encourages the prostitution of any woman or girl who is a defective : or
- iv. Who, being the owner or occupier of any premises, or having or acting or assisting in the management or control thereof, induces or knowingly suffers any woman or girl who is a defective to resort to or be in or upon such premises for the purpose of being unlawfully and carnally known by any man, whether such carnal knowledge is intended to be with any particular man or generally : or

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- v. Who, with intent that any woman or girl who is a defective should be unlawfully and carnally known by any man, whether such carnal knowledge is intended to be with any particular man or generally, takes or causes to be taken such woman or girl out of the possession and against the will of her parent or any other person having the lawful care or charge of her—

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shall be guilty of a misdemeanour and shall be liable upon conviction on indictment to be imprisoned, with or without hard labour, for any term not exceeding Two years unless he proves that he did not know, and had no reason to suspect, that the woman or girl was a defective.

(2) Section Twelve of "The Offences Against the Person Act, 1885," shall apply in the case of a woman or girl who is a defective in the same manner as it applies in the case of a girl who is under the age of Sixteen years.

49 Vic. No. 23.

(3) Without prejudice and in addition to the provisions of "The Offences Against the Person Act, 1885," as amended by "The Offences Against the Person Act, 1918," no consent shall be any defence in any proceedings for an indecent assault upon any defective, if the accused knew or had reason to suspect that the person in respect of whom the offence was committed was a defective.

9 Geo. V. No. 37.

(4) If on the trial of an indictment for rape the jury are satisfied that the accused is guilty of an offence under Paragraph 1. of Subsection (1) of this section, but are not satisfied that he is guilty of rape, the jury may acquit him of rape and find him guilty of such offence as aforesaid, and in that event he shall be liable to be punished as if he had been convicted on an indictment for such offence as aforesaid.

(5) The wife or husband of a person charged with an offence under this section may be called and examined as a witness either for the prosecution or defence and without the consent of the person charged

Cf. 61 & 62 Vic.,  
c. 36, s. 4 (Imp.).

**102** Any person who in any certificate, book, statement, return, or other document required for the purposes of this Act, knowingly makes any false entry as to any matter as to which he is by this Act or any rules made under this Act required to make an entry, shall be guilty of a misdemeanour.

False entries.  
3 & 4 Geo. V.,  
c. 28, s. 57.  
(Imp.).

**103** If any person, for the purpose of obtaining any certificate for the certification of an institution or house under this Act, or the renewal of any such certificate, wilfully supplies to the Board any untrue or incorrect information, plan, description, or notice, he shall be guilty of a misdemeanour.

Punishment of  
person making  
untrue statement  
for purpose of  
obtaining  
certificate.

**104** If any person is guilty of a breach of any regulation made under this Act, he shall be liable on summary conviction to a penalty not exceeding such as may be prescribed as respects such a breach by the regulations, but the maximum penalty imposed by the regulations in respect of any breach shall not exceed imprisonment, with or without hard labour, for a term of Three months or a fine of Fifty Pounds, or both.

*Ibid.*, s. 58  
(Imp.).  
Penalty for  
breach of  
regulations.  
*Ibid.*, s. 59  
(Imp.).

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Punishment for offences.

*Ibid.*, s. 60  
(Imp.).

**105**—(1) An offence under this Act declared to be a misdemeanour shall be punishable by fine, in the discretion of the court, or by imprisonment for a term not exceeding Two years, with or without hard labour, but may, except where otherwise expressly provided, instead of being prosecuted in the Supreme Court, be prosecuted summarily, and, if so prosecuted, shall be punishable only with imprisonment for a term not exceeding Three months, with or without hard labour, or with a fine not exceeding Fifty Pounds, or both.

(2) Any other offence under this Act shall be punishable summarily with imprisonment for a term not exceeding Three months, with or without hard labour, or with a fine not exceeding Fifty Pounds or both.

Protection of officers for the purposes of arrest.

*Ibid.*, s. 62  
(Imp.).

**106** The superintendent or managers of an institution and the owner of a certified house and every officer of such institution or house authorised in writing by the superintendent, managers, or owner, for the purpose of conveying a person to or from the institution or house, or of apprehending and bringing him back to the institution or house in case of his escape or refusal to return, shall, for that purpose and while engaged in that duty, have all the powers, authorities, protections, and privileges as any police officer has by common law or statute.

No liability for acts in good faith.  
2 Geo. V. No. 6,  
s. 131 (N.Z.).

**107**—(1) A person who does any act in pursuance or intended pursuance of any of the provisions of this Act shall not be under any civil or criminal liability in respect thereof, whether on the ground of want of jurisdiction or of mistake of law or of fact, or on any other ground, if he has acted in good faith and with reasonable care.

(2) In any proceedings taken against any such person for any such act, the burden of proving that he acted without good faith or without reasonable care shall lie upon the plaintiff.

(3) Any proceedings taken against any such person for any such act may, upon application to the court in which they are taken, be stayed if the court is satisfied that there is no reasonable ground for alleging want of good faith or reasonable care, or that the proceedings are frivolous or vexatious.

(4) No such proceedings shall be commenced unless within Six months after the act complained of, or, in the case of a continuance of injury or damage, during the continuance or within Six months after the ceasing thereof:

Provided that, in estimating the said period of Six months so limited for the commencement of proceedings, no account shall be taken of any time or times during which the person injured was in confinement, lawfully or unlawfully, as a defective, or was ignorant of the facts which constitute the cause of action, or during which the defendant was out of Tasmania.

(5) Nothing in this section shall be so construed as to deprive any person of any defence which he would have independently of this section.

(6) No proceedings shall be taken against any person on the ground merely that any defective was certified or detained as belonging to any one class instead of another class.

*Mental Deficiency.*

**108** All moneys received in respect of penalties and fees under this Act shall be paid into the Consolidated Revenue. A.D. 1920.  
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Appropriation.

**109** All expenses incurred in administering, carrying out, and enforcing this Act, shall be defrayed out of moneys from time to time appropriated by Parliament for the purpose. Expenses of administration.

**110** The Governor may, from time to time, make regulations as to the following matters— Regulations.  
Cf. 3 and 4 Geo. V., Ch. 28. ss. 20, 41.  
4 Geo. V., 1122, s. 164 (S. A.).

- i. The notification of defective children to the Chairman of the Board, their removal to receiving depôts or places of safety, and the procedure of placing defectives in institutions or under guardianship or supervision :
- ii. The procedure on petitions and applications under this Act, and the forms, times, and modes of proceedings under this Act :
- iii. The forms to be used for the purposes of this Act :
- iv. The powers, duties, authorities, and privileges of the Board, and of the members, secretary, and officers thereof, and of medical or other superintendents, and all other persons engaged in the administration of this Act :
- v. The establishment, purposes, management, and control of the State Psychological Clinic, and the appointment of the Director and other officers of the Clinic, and the tenure of office, powers, duties, authorities, salaries, fees, and privileges under this Act :
- vi. The fees to be paid in respect of examinations, and of other matters arising under this Act :
- vii. The management, control, and supervision of institutions and of all other matters appertaining thereto ; and the reception, care, control, maintenance, treatment, classification, assistance, protection, and supervision of defectives ; and the inspection of institutions, and the visitation of defectives therein ; and the transfer of defectives from one institution to another ; and their discharge, either finally or on leave :
- viii. The powers and duties of persons appointed guardians of defectives under this Act ; the visitation of such defectives ; and their discharge from guardianship :
- ix. The holding of inquiries and any other matter necessary or proper for the carrying into effect of the provisions of this Act with respect to institutions, and the inmates thereof, and to guardianship and supervision :
- x. The study of improved methods of investigating, diagnosing, and treatment of mental deficiency, and of the training, education, and instruction of defectives and all other matters related thereto :
- xi. The recovery from persons legally responsible therefor of the costs of maintenance, clothing, medical attendance, and examinations under this Act, or of fees payable under this Act :

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*Mental Deficiency.*

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- xii. All other matters and things whatsoever necessary or convenient to be prescribed or provided for, for fully and effectually carrying out and giving force and effect to the objects, purposes, powers, authorities, and privileges of this Act.